

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

----- )  
SMARTMATIC USA CORP., SMARTMATIC )  
INTERNATIONAL HOLDING B.V., and SGO )  
CORPORATION LIMITED, )

Plaintiffs, )

v. )

MICHAEL J. LINDELL and MY PILLOW, INC., )

Defendants. )  
)  
)  
)  
----- )

Case

No.

22-cv-0098-WMW  
-JFD

**FIRST SUPPLEMENTAL**  
**COMPLAINT AND DEMAND**  
**FOR JURY TRIAL**

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>1</b>
<b>PARTIES</b>	<b>3</b>
<b>JURISDICTION &amp; VENUE</b>	<b>5</b>
<b>FACTUAL ALLEGATIONS</b>	<b>6</b>
<b>I. Smartmatic’s Role as an Election Technology Company</b>	<b>6</b>
A. Smartmatic grew from a small start-up into a successful multi-billion-dollar enterprise.	7
B. Smartmatic’s success is built on its reputation for secure, reliable, and auditable election technology and software.	8
C. Smartmatic had a relatively small, non-controversial role in the 2020 U.S. election.	9
<b>II. Defendants’ Disinformation Campaign Against Smartmatic</b>	<b>17</b>
A. The 2020 U.S. election was secure, reliable, and accurate.	18
B. Mr. Lindell decided to sell an embellished story connecting voting machines to election fraud.	23
C. Mr. Lindell engaged in a disinformation campaign against Smartmatic.	25
D. Mr. Lindell presented his statements about Smartmatic as factual and based on evidence.	<del>46</del> <u>48</u>
<b>III. Mr. Lindell’s False Statements and Implications About Smartmatic</b>	<del>49</del> <u>52</u>
A. Mr. Lindell falsely stated and implied that Smartmatic’s election technology and software were widely used in the 2020 U.S. election in order to attack the election.	<del>50</del> <u>53</u>
B. Mr. Lindell falsely stated and implied that Smartmatic had a corrupt relationship with Dominion and ES&S during the 2020 U.S. election in order to attack the election.	<del>53</del> <u>56</u>
C. Mr. Lindell falsely stated and implied that Smartmatic stole the 2020 U.S. election for Joe Biden and Kamala Harris.	<del>56</del> <u>59</u>
D. Mr. Lindell falsely stated and implied that Smartmatic’s election technology, hardware, and software were compromised or hacked by China or other foreign countries during the 2020 U.S. election.	<del>62</del> <u>65</u>
E. Mr. Lindell falsely claimed that Smartmatic machines were connected to the Internet during the 2020 U.S. election in order to attack the election.	<del>66</del> <u>69</u>

F. Mr. Lindell falsely stated and implied that Smartmatic was engaged in a widespread criminal conspiracy to steal the 2020 U.S. election. ~~68~~71

G. Mr. Lindell falsely stated and implied that Smartmatic's election technology, hardware, and software were designed to steal elections and have stolen elections before. ~~70~~73

**IV. Mr. Lindell Acted with Actual Malice and Ill Will Towards Smartmatic** ~~72~~75

A. Mr. Lindell had no basis for his statements and implications regarding Smartmatic. ~~73~~76

B. There was publicly available information that contradicted the claims Mr. Lindell and his guests were making. ~~75~~78

C. Mr. Lindell also had obvious reasons to doubt the veracity of his guests. ~~110~~113

D. Mr. Lindell failed to exercise due care when publishing defamatory statements about Smartmatic. ~~113~~117

E. Mr. Lindell used his disinformation campaign against Smartmatic for financial gain and acted with ill will and improper motives. ~~116~~120

F. Mr. Lindell's statements about Smartmatic show personal animosity and ill will towards Smartmatic. ~~121~~125

**V. Defendants' disinformation campaign irreparably harmed Smartmatic and its election technology and software.** ~~122~~126

**CAUSES OF ACTION** ~~128~~132

**FIRST CAUSE OF ACTION AGAINST BOTH DEFENDANTS** ~~128~~132

**SECOND CAUSE OF ACTION AGAINST BOTH DEFENDANTS** ~~130~~134

**PRAYER FOR RELIEF** ~~131~~135

**JURY DEMAND** ~~133~~137

Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, “Smartmatic”), through their attorneys, bring this complaint against Michael J. Lindell and My Pillow, Inc. d/b/a MyPillow (collectively, “Defendants”).

### **INTRODUCTION<sup>1</sup>**

1. Crazy like a fox. Mike Lindell knows exactly what he is doing, and it is dangerous.

2. Mr. Lindell knows Joe Biden and Kamala Harris won the 2020 election for President and Vice President of the United States. He knows the election was not rigged, fixed, or stolen. He knows voting machines did not switch votes from former President Trump to now President Biden.

3. These facts do not matter to Mr. Lindell because he knows he can sell. Mr. Lindell knows he can sell xenophobia. He knows he can sell conspiracy theory. He knows he can sell a preconceived story about voting machines stealing democracy by stealing votes from a president who is incredibly popular with millions of Americans. And, of course, Mr. Lindell—“the MyPillow Guy”—knows he needs to sell pillows to keep and increase his fortune.

4. Mr. Lindell saw a once-in-a-lifetime opportunity following the 2020 U.S. election. President Trump lost the election. That is, and was, undeniable. But Mr. Lindell knew that millions of people who voted for President Trump were unhappy. He also knew that they would embrace anyone who championed the idea that President Trump did not lose the election, but had it stolen from him and from them.

---

<sup>1</sup> Smartmatic’s election technology, hardware and software has been used in voting jurisdictions that are predominately Conservative, Liberal, Republican, Democrat, and other. Smartmatic is apolitical. Smartmatic does not take issue with legal challenges being raised regarding the rules implemented by voting jurisdictions during the 2020 U.S. election and the adherence to those rules. Smartmatic’s lawsuit is focused on the fact that its election technology, hardware, and software were not used to steal the 2020 U.S. election.

5. Mr. Lindell decided to become one of their champions. After others had gone silent, Mr. Lindell spoke out about the 2020 U.S. election being stolen from President Trump. He held rallies. He went on TV. He published videos. Once a fixture on late night infomercials embracing his pillows, in early 2021, Mr. Lindell's infomercials turned to spreading disinformation about the 2020 U.S. election.

6. Mr. Lindell's message was as dangerous as it was factually inaccurate. Mr. Lindell told people that Smartmatic stole the 2020 U.S. election. He told people that Smartmatic's election technology, hardware, and software were hacked by China and other foreign countries. He told people that Smartmatic election technology, hardware, and software were developed for the sole purpose of stealing foreign elections by switching votes. And he told people that Smartmatic deployed its election technology, hardware, and software to do just that in the 2020 U.S. election. All lies.

7. Mr. Lindell intentionally stoked the fires of xenophobia and party-divide for the noble purpose of selling his pillows. The MyPillow brand was, and is, a ubiquitous feature of Mr. Lindell's media appearances. The MyPillow logo is everywhere. Promo codes for ordering from MyPillow are conveniently and strategically placed during his appearances. Mr. Lindell's sales strategy is brilliant: "If you like what I am saying about election fraud, you are going to love my pillows, so buy them to support me and my message."

8. It is time to end Mr. Lindell's campaign. Smartmatic had no role in the 2020 U.S. election outside of providing some technology, support, and services to Los Angeles County. That is it. Yet, Mr. Lindell sees fit to perpetuate a lie about the company because he wants to be seen as a champion of a deceptive message that still sells. But enough is enough. The country

will sleep better at night knowing the judicial system holds people like Mr. Lindell accountable for spreading disinformation that deceives and harms others.

9. Smartmatic brings defamation and Minnesota Deceptive Trade Practices claims against Defendants Michael J. Lindell and his company MyPillow. Smartmatic seeks to recover for the economic and non-economic damage caused by Defendants' disinformation campaign, punitive damages, attorneys' fees and costs, and a permanent injunction. Finally, Smartmatic seeks a declaration requiring Defendants to retract their false statements and implications fully and completely.

### **PARTIES**

10. Plaintiff Smartmatic USA Corp. is an election technology and software company. The company's principal place of business is located in Boca Raton, Florida. It is incorporated in Delaware. During the 2020 U.S. election, Smartmatic USA Corp. provided election technology, support, and services to Los Angeles County. Its election technology and software were not used in any other county or State in the 2020 U.S. election.

11. Plaintiff Smartmatic International Holding B.V. owns Smartmatic USA Corp. (100% ownership). The company's principal place of business is located in Amsterdam, Netherlands. It is incorporated in the Netherlands. Smartmatic International Holding B.V. owns multiple companies operating under the Smartmatic brand in almost two dozen countries.<sup>2</sup> Smartmatic International Holding B.V. did not play any role in the 2020 U.S. election outside of

---

<sup>2</sup> Smartmatic International Holding B.V. owns election technology and software companies in United States (Smartmatic USA Corp.), Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore, Netherlands, Mexico, Ecuador, Brazil, Estonia, Taiwan, and the Philippines as well as branches in Colombia, Argentina, Honduras, Pakistan, Italy, Jamaica, and El Salvador.

the technology, support, and services provided by Smartmatic USA Corp. for Los Angeles County.

12. Plaintiff SGO Corporation Limited owns Smartmatic International Holding B.V. (100% ownership). The company's principal place of business is located in London, United Kingdom. It is incorporated in the United Kingdom. SGO Corporation Limited is the parent company of Smartmatic International Holdings B.V. SGO Corporation also owns significant stock in other companies that were damaged by the disinformation campaign. SGO Corporation Limited did not play any role in the 2020 U.S. election outside of the technology, support, and services provided by Smartmatic USA Corp. for Los Angeles County.

13. Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited are collectively referred to as "Smartmatic" in this complaint. Each of the companies owned by SGO Corporation Limited, directly or through Smartmatic International Holding B.V., was injured as a result of the Defendants' disinformation campaign that irreparably tarnished the Smartmatic brand (corporate and product).

14. Defendant Michael J. Lindell ("the MyPillow guy") is an American businessman, entrepreneur, author, political activist, and political pundit. Mr. Lindell is a resident of Minnesota. Mr. Lindell is the founder and CEO of MyPillow. Following the 2020 U.S. election, Mr. Lindell began appearing on television, radio shows, and podcasts with regularity to discuss, or attack, the results of the election.

15. Defendant MyPillow is a major, for-profit Minnesota manufacturing corporation with its principal place of business in Chaska, Minnesota. MyPillow has 15 retail locations, employs over 1,600 people, markets more than 100 products, and has sold over 50 million pillows throughout the United States. MyPillow sponsors political media, including the Right



Side Broadcasting Network (“RSBN”), a media group that provides daily news coverage on the Internet. MyPillow routinely advertises on Fox News, One America News Network (“OANN”), Newsmax, and numerous other television, podcast, and radio stations.

16. At all relevant times hereto, Mr. Lindell was acting as MyPillow’s agent and within the scope of his employment, including during each and every appearance he made defaming Smartmatic.

17. After the November 2020 election, Mr. Lindell, both in his individual capacity and by and through his company MyPillow, began spreading a false narrative regarding the outcome of the election by disparaging and defaming Smartmatic. The narrative served his personal and financial interests as he and MyPillow benefitted from the publicity while creating a perception that the 2020 U.S. election was rigged and stolen by Smartmatic. The narrative and Mr. Lindell’s defamation campaign also served MyPillow’s financial interest.

18. Mr. Lindell used his business acumen to market MyPillow products to Trump supporters in the wake of the November 2020 election. Mr. Lindell crafted and broadcast a four-part documentary series; appeared on television shows, podcasts, and Internet radio programs with regularity; and held a two-day, live, and live-streamed conference to spread far and wide his false narrative blaming Smartmatic for the outcome of the 2020 U.S. election.

19. Mr. Lindell’s appearances were also promotions for MyPillow. Mr. Lindell appeared as “the MyPillow guy” and advertised his products to viewers and listeners during the same program segments where he defamed Smartmatic. Mr. Lindell gave election related MyPillow promo codes, such as “FightforTrump” and “Proof,” to viewers and listeners during the same program segments where he defamed Smartmatic.

#### **JURISDICTION & VENUE**

20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

21. This Court has personal jurisdiction over Michael Lindell, an individual who resides in Minnesota. This Court also has personal jurisdiction over My Pillow, Inc., a company incorporated in Minnesota with its principal place of business in Chaska, Minnesota.

22. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. § 1391(b)(1) because Defendants Michael Lindell and MyPillow both reside in Minnesota.

### **FACTUAL ALLEGATIONS**

23. Mr. Lindell is a shrewd businessman who used his personal and company wealth as a platform to (1) spread false information about Smartmatic; and (2) garner popularity and purchasers for his MyPillow products. When Donald Trump and Michael Pence lost the election, Mr. Lindell saw the opportunity to capitalize on their popularity. Mr. Lindell attended pro-Trump rallies and appeared on talk shows. Mr. Lindell claimed that Donald Trump and Michael Pence did not lose the election. Mr. Lindell claimed that the electronic voting technology companies, including Smartmatic, were hacked by China. Mr. Lindell claimed that the machines stole the election to make it appear as if Donald Trump and Michael Pence lost the election. Smartmatic was a main target in Mr. Lindell's false narrative.

#### **I. Smartmatic's Role as an Election Technology Company**

24. Antonio Mugica and Roger Piñate founded Smartmatic in 2000 in Boca Raton, Florida. At the start, Smartmatic focused mainly on developing cybersecure technology for the banking industry, offering secure online protocols enabling hyper-secure interconnection between digital devices.

25. Smartmatic turned its focus to election technology and software following the 2000 U.S. election and the “hanging chad” controversy in Florida. Mr. Mugica and Mr. Piñate realized that flawed technology had given election automation a bad reputation. With that in mind, they began to develop advanced voting platforms to restore people’s faith in technology-driven elections. They wanted to take the same technology built for secure bank automation and use it to register, count, and transmit votes. They believed this could give people confidence that their ballots would be accurately counted.

26. Since 2003, Smartmatic’s election technology has processed more than 5 billion secure votes worldwide without a single security breach. Smartmatic has provided election services and implemented election technologies for election commissions in more than 25 countries on five continents.

27. With each election, Smartmatic’s mission is, and always has been, to increase integrity in the democratic process through enhanced citizen engagement and trust in election systems. Smartmatic harnesses the full power of technology to deliver reliable, accurate and auditable election results.

**A. Smartmatic grew from a small start-up into a successful multi-billion-dollar enterprise.**

28. Today, Smartmatic provides end-to-end election services to local, state, and national governments. Its portfolio of products has grown to include a comprehensive suite of technologies and services to make every phase of the election process more efficient and transparent.

29. Smartmatic’s products now include electronic voting machines (voters vote electronically using voting machines with a touch screen, and those machines count the votes as they are made), electronic counting machines (voters vote with paper ballots which can be

counted electronically), ballot marking devices (voters make their selection on touch-screen machines that then print a paper ballot to be counted later by the government election authority), voter management (voter databases are built using biographic and/or biometric information to ensure that the voters are legally entitled to vote, and that there is one-voter/one-vote), poll worker support (technology facilitates poll station administration and enforcement of regulations), online voting (convenient and verifiable online—remote, over the internet—voting platforms) and election management platforms (allows authorities to configure their systems, monitor operations, announce results, and train staff).

30. Smartmatic's growth and product development is a story of industry-leading advancements and successes through relentless attention to reliability, accuracy, and auditability.

**B. Smartmatic's success is built on its reputation for secure, reliable, and auditable election technology and software.**

31. The secret to Smartmatic's success has been showing its commitment to its mission statement: to provide secure, reliable, and auditable election technology and software. Counties, states, and countries that choose to use Smartmatic's election technology and software understand that they are using a technology that has processed over 5 billion votes without any security breaches and with an auditable paper trail demonstrating that the elections were not rigged, hacked, or stolen.

32. One of Smartmatic's best marketing tools are case studies. Case studies are opportunities for Smartmatic to demonstrate to a potential client how Smartmatic's election technology and software have been used by other counties, states, and countries to improve the voter experience and provide secure, reliable, and auditable results. These case studies demonstrate, time and time again, that Smartmatic's election technology and software can ensure quick and accurate voting results.

33. Another one of Smartmatic's key marketing tools are references. Most opportunities for new clients include providing referrals who can talk about their experience with Smartmatic's election technology and software. Smartmatic's past successes, which the referrals discuss, are critical to new clients. New clients want to know that Smartmatic's election technology and software are secure, reliable, and auditable. That is what they learn from Smartmatic's referrals.

34. Finally, Smartmatic is also fortunate to have been recognized as one of the best election technology and software companies in the world. For example, in 2005, The Carter Center and the European Union identified Smartmatic's election technology as one of the most secure, reliable, and auditable election technologies in the world. In 2012, former President Jimmy Carter called Smartmatic's solution "the best voting system in the world." These accolades and recognitions by some of the world's foremost election authorities are yet another key to Smartmatic's success. Its reputation as one of the "best voting systems in the world" is important for expanding existing relationships and developing new relationships with counties, states, and countries looking to improve their election technology.

**C. Smartmatic had a relatively small, non-controversial role in the 2020 U.S. election.**

35. The 2020 U.S. election was a turning point for Smartmatic. In June 2018, Los Angeles County selected Smartmatic to help election authorities manufacture and implement a new election system for the County. This was a significant opportunity for Smartmatic to demonstrate the security, reliability and auditability of its election technology once again—this time on an even bigger stage. Success in Los Angeles County positioned Smartmatic to market its election technology and software to other counties and states in the United States and to voting jurisdictions around the world who were inclined to follow Los Angeles County's lead.

**1. Los Angeles County introduced a new Voting Solutions for All People initiative for the 2020 U.S. election.**

36. Los Angeles County is the nation's most populous voting jurisdiction with more than 5.4 million registered voters. Los Angeles County is one of the most complex election jurisdictions because of its geographic size, logistics, high bar for certification requirements, multiple language support requirements, and legally-mandated accessibility features for voters with disabilities.

37. Since 2009, the Los Angeles County's Registrar-Recorder/County Clerk (the "Department") had been working to improve the voting experience through its Voting Solutions for All People ("VSAP") initiative. Given the size, complexity, and demographics of Los Angeles County, one of the Department's top priorities was to remove barriers and obstacles that made it difficult for voters to participate in the electoral process.

38. The VSAP initiative sought to ensure that voters in Los Angeles County had greater opportunities to participate by providing expanded options for voting in a manner that is convenient, accessible, and secure. The Department described key aspects of the VSAP initiative as follows:

- a. Redesigned Vote-by-Mail ("VBM") Ballot: The new VBM ballot was introduced to County voters in the November 2018 General Election. The new full-face VBM ballot features larger font sizes and clearer instructions making it easy to read, complete, and return. In addition, postage is prepaid, so there is no longer a need to attach a stamp. Voters who prefer to drop off their ballot in-person can do so at any VBM drop-off location or vote center throughout the County.

- b. Redesigned Ballot Marking Device (“BMD”): The BMD replaces the County’s legacy InkaVote system. The BMD allows every voter to customize their experience with both visual and audio access in thirteen languages and offers accessibility features that provide voters with disabilities equality and independence in casting ballots. For auditability and security, the BMDs produce human-readable paper ballots that exceed national voting system security standards.
- c. New Electronic Pollbook (“e-Pollbook”): The e-Pollbook replaces the printed roster that was previously used at voting centers for voters to check-in. The e-Pollbook is connected through a secure private network to the State of California database of eligible voters. This allows voters to check in and cast their ballot at any vote center in the County. The e-Pollbook is updated in real-time and will indicate if a voter has already cast a ballot ensuring voting integrity. In addition, the e-Pollbook enables eligible voters to register to vote at any vote center or update their registration.
- d. New Interactive Sample Ballot (“ISB”): The ISB is a new convenient option to expedite the in-person voting experience. The ISB allows the voter to mark their sample ballot digitally through a web-based application accessible through the Department’s website. Upon completing selections, a Quick Response Code is generated producing a Poll Pass that the voter can print or save onto a mobile device, and which the voter can then take to any vote center to be scanned on the BMD. The voter’s selections will

be imported onto the BMD allowing the voter to once again review their selections and make any further changes prior to casting their ballot.

- e. Redesigned Modern Tally System: The Tally System is an innovative solution for paper ballot scanning and tabulation that is specifically designed to support Los Angeles County's need to process millions of ballots. It utilizes high-speed scanners to capture high-definition images of ballots and a message brokering architecture to process large volumes of digital images quickly and accurately. From paper ballot to digital image to final cast vote record, the Tally System captures data about how each ballot is read and processed, allowing for the tracking and auditing of individual ballots to verify the integrity and accuracy of election results.
- f. Redesigned Vote Centers: Vote centers were located throughout the entire County. They each underwent comprehensive surveys and assessments to ensure they met Americans with Disabilities Act accessibility requirements and other qualifying criteria such as on-site parking availability, convenient access to public transit, and hours of operation.
- g. New Mobile Vote Center Program: The Department also implemented a new Mobile Vote Center Program to further expand voting opportunities to the public. The program supplemented existing vote centers that might have been highly congested and provided voting services to communities that might have been geographically isolated or not appropriately served by a standard vote center. Mobile voting units were deployed on a



scheduled basis across the County to provide enhanced voting services and raise voter awareness during the voting period.

39. The VSAP initiative included the first government-designed and owned voting system. The new system allowed voters to vote at any of the County's 978 centralized vote centers, a change made possible "by advanced technology like electronic poll books and ballot marking devices."

**2. Los Angeles County selected Smartmatic to contribute election technology and software to the Voting Solutions for All People initiative.**

40. Smartmatic was honored to be selected by the Department to assist with the VSAP initiative. In June 2018, Smartmatic entered into a contract to manufacture (hardware and software) and implement new custom-designed BMDs in collaboration with Los Angeles County as part of its VSAP initiative.

41. Smartmatic's role in the initiative was limited but important to the company as it provided an opportunity to demonstrate its technology and software in an important jurisdiction in the United States. By the end of 2019, Smartmatic had developed the BMDs and was manufacturing 31,100 units for Los Angeles County. Smartmatic also performed systems integration of the BMDs.

42. In total, Smartmatic provided the following technology and services to Los Angeles County under the VSAP initiative: (1) engineered and manufactured the BMD hardware, (2) programmed and installed the BMD software, (3) led the California certification process, (4) created the backend software to manage the devices, (5) provided systems integration services, (6) built the VSAP operations center, (7) handled logistics and

setup/breakdown of the vote centers, (8) oversaw real-time data management for deployment, and (9) supplied Help Desk services on Election Day.

**3. Smartmatic's involvement with Los Angeles County was a success.**

43. Smartmatic's election technology and software were used in the March 3, 2020, California presidential primary in Los Angeles County. It was an undisputed success. Loyola Marymount University conducted an exit poll following the primary and concluded that most voters trusted the election and felt the technology made the voting easier. (3/11/20 Loyola Marymount University, *2020 LA Votes Presidential Primary Exit Poll* (Exhibit 93).) The key findings included:

This year, LA County implemented new voting technology. Compared to voting in previous elections, technology made voting in this primary:

- Much easier: 57.5%
- A bit easier: 17.6%
- The same: 13.2%
- A bit more difficult: 7.4%
- Much more difficult: 4.3%

How much do you trust that your vote will be counted as intended?

- Greatly trust: 51.7%
- Somewhat trust: 35.0%
- Somewhat distrust: 9.3%
- Greatly distrust: 4.0%

44. The California primary election was the first test for Los Angeles County's VSAP initiative, with more than 860,000 voters casting in-person ballots. Respondents overwhelmingly

agreed that they had positive voting experiences, with more than 85% choosing “excellent” or “good” when asked about their overall experience.

45. The VSAP initiative was also well-received in the November general election. By the numbers:

- 791 Vote centers open on election day
- 31,000 BMDs manufactured by Smartmatic
- 19,445 BMDs deployed for the election
- 800+ Election workers hired and trained by Smartmatic
- 6,129,494 Citizens eligible to vote
- 5,785,377 Citizens registered to vote
- 73.8% Turnout of registered voters
- 4,270,129 Votes cast in the 2020 general election
- 834,150 Votes cast in-person in the 2020 general election

46. The November general election in Los Angeles County from a technology perspective was flawless. A County official described the system as a “success.” There were no serious problems during the election in Los Angeles County, and voters experienced reduced lines and reduced delays. No questions were raised about security, reliability or auditability of the results in Los Angeles County. Expectations were high, and Smartmatic exceeded those expectations.

47. Smartmatic was thrilled with its success in the Los Angeles County election. Counties and states in the United States and countries across the world pay attention to Los Angeles County when it comes to election technology and software. Smartmatic’s contract with Los Angeles County was the largest in the United States. Smartmatic’s successful participation

in the VSAP initiative was seen as a once-in-a-lifetime opportunity for the company. It provided the company the ability to highlight its role in the largest voting jurisdiction in the United States, and highlight its success in facilitating secure, reliable, and auditable election results. This was the big success Smartmatic had been building towards for 20 years.

48. There was no controversy in Los Angeles County. In the 2020 U.S. election, the Democratic candidates for President and Vice President won over 71% of the vote. In the 2016 U.S. election, the Democratic candidates for President and Vice President won over 72% of the vote. There was no material change in the voting pattern in Los Angeles County. Nor were there any allegations or suggestions that the vote in Los Angeles County had been rigged, hacked, or stolen.

49. Smartmatic did not play any role in the general election outside of Los Angeles County. Smartmatic's election technology, software, equipment, and services were not used in any other county or state for the 2020 U.S. election. Smartmatic's software was not used in any other county or state. Smartmatic did not license or contract with any third party, including other election technology companies, for the use of Smartmatic's technology, software, machines, or services in any other county or state for the 2020 U.S. election.

50. Smartmatic's machines did not connect to the Internet during the election in Los Angeles County. Smartmatic's machines are "air-gapped" meaning they are "self-contained and never connected to the Internet." (11/11/20 Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 103).) Votes cast using Smartmatic's election technology and software were hand delivered after paper ballots were printed from Smartmatic's machines.

51. Given that Smartmatic had no role in the general election outside of Los Angeles County, Smartmatic had no reason to be concerned about being embroiled in a discussion about

election outcomes in some of the states where the vote tally was closer than it was in California. For example, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin were states where the vote tally between the Democratic and Republican nominees for President and Vice President were much closer than the margin in California. But, Smartmatic had no role whatsoever in the elections that took place in those states. For example:

- a. Nevada used election technology supplied by Dominion and Election Systems & Software (“ES&S”). (Nevada Secretary of State, *Voting System Testing and Security List* (Exhibit 62).)
- b. Arizona used election technology supplied by multiple companies, including Dominion and ES&S. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 57).)
- c. Georgia used election technology supplied by Dominion. (8/9/19 Georgia Secretary of State, *Dominion Voting System Certification* (Exhibit 42).)
- d. Pennsylvania certified multiple election technology companies for the 2020 election, including Dominion, ES&S, Unisyn Voting Systems, ClearBallot Group, and Hart InterCivic. (Pennsylvania Department of State, *Electronic Voting Systems Certified after January 1, 2018* (Exhibit 52).)
- e. Michigan used election technology supplied by Dominion, ES&S, and Hart InterCivic. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 48).)
- f. Wisconsin approved multiple election technology companies for the 2020 election, including Dominion, ES&S, Sequoia Voting Systems, Premier

Election Solutions, Populex, Vote-PAD, and ClearBallot Group.  
 (Wisconsin Elections Commission, *Voting Equipment List by Municipality*  
*February 2020* (Exhibit 59).)

52. Moreover, Smartmatic had no reason to get itself involved in any discussion about the election outcome outside of Los Angeles County. Apart from commenting on its role in the election in Los Angeles County, Smartmatic made no public comments about the 2020 U.S. election prior to the disinformation campaign. Smartmatic made no comments about the security, reliability, or auditability of the election technology and software used outside of Los Angeles County. Smartmatic made no public comments about election technology and software used in the 2020 U.S. election being hacked or compromised. Smartmatic made no public comments about the 2020 U.S. election being fixed, rigged, or stolen. Smartmatic had done a great job in Los Angeles County. It had no interests, and made no public comments, outside of its limited role.

## **II. Defendants' Disinformation Campaign Against Smartmatic**

53. In 2016, Mr. Lindell saw the magnetic power that presidential candidate Donald Trump had over many Americans. Seizing on the opportunity to share in the fame and grow MyPillow's profits, Mr. Lindell became a Donald Trump supporter, first meeting with him in 2016 before he was elected. Mr. Lindell attended White House events and other President Trump rallies and events in 2017, 2018, 2019, and 2020.

54. President Trump, in turn, endorsed Mr. Lindell and MyPillow. During one press conference at the White House, President Trump said, "I actually bought a couple of [MyPillow] pillows and they're very good. They're great. I've slept so much better ever since."<sup>3</sup> During a

<sup>3</sup> Available at [https://www.youtube.com/watch?v=tSv\\_cGUhHOI](https://www.youtube.com/watch?v=tSv_cGUhHOI).

rally in North Dakota, President Trump said of Mr. Lindell, “he’s the greatest ... he does make a great product, great pillows, I actually use them, believe it or not ... and he’s been with us right from the beginning.”<sup>4</sup>

55. Mr. Lindell saw that his unabashed support for President Trump grew Mr. Lindell’s personal fame and fortune and attracted new MyPillow buyers and supporters. For example, in 2018, Mr. Lindell noted that his relationship with Trump has “been very good for business...” (11/4/18 CNN, *How Mike Lindell, the MyPillow guy, became a midterm messenger* (Exhibit 140).) In 2019, MyPillow’s revenue exceeded \$300 million. (1/27/21 The New York Times, *MyPillow C.E.O.’s Trump Conspiracy Theories Put Company on the Spot* (Exhibit 141).) In 2020, Mr. Lindell’s personal estimated net worth was \$300 million. (6/17/20 The List, *The MyPillow Guy’s Net Worth is Even Higher Than You Think* (Exhibit 142).)

**A. The 2020 U.S. election was secure, reliable, and accurate.**

56. In November 2020, Joe Biden and Kamala Harris won the U.S. election for President and Vice President, and President Donald Trump and Vice President Michael Pence lost. The Democratic candidates secured 306 electoral votes. The Republican candidates secured 232 electoral votes. On the popular vote, the Democratic candidates received 81 million votes compared to 74 million for the Republican candidates. Among other states, the Democratic candidates won each of the states discussed above – Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. The victories for the Democratic candidates in those states were verified and re-verified by each of their respective Secretaries of State.<sup>5</sup>

<sup>4</sup> Available at <https://www.youtube.com/watch?v=rzFJo9asFa0>.

<sup>5</sup> Outside of the election for President and Vice President, Republican candidates won elections in Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. Those victories were verified by the respective Secretaries of State.

57. The security, reliability, and accuracy of the 2020 U.S. election were repeatedly confirmed before Mr. Lindell began making his defamatory statements. Governors and Secretaries of State from across the country verified the security, reliability, and accuracy of their election results. For example:

- a. Nevada: Secretary of State Barbara Cegavske reported: “All voting machines undergo extensive pre-election and post-election examination to ensure they function as expected. The NV Gaming Control Board tests and certifies our systems. The post-election audits and recounts conducted in Nevada confirmed that the machines accurately tabulated the votes cast.” (Nevada Secretary of State, *Facts v. Myths: Nevada 2020 Post-General Election* (Exhibit 64).)
- b. Arizona: Governor Doug Ducey stated: “We have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election.” (12/1/20 Twitter, @DougDucey (Exhibit 58).)
- c. Georgia: Secretary of State Brad Raffensperger reported: “Georgia’s historic first statewide audit reaffirmed that the state’s new secure paper ballot voting system accurately counted and reported results.” (11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 44).)
- d. Pennsylvania: Governor Tom Wolf reported: “To say there was voter fraud is a lie. To say the election was unconstitutional is a lie. To say our



voting systems weren't secure is a lie." (11/12/20 Twitter, @GovernorTomWolf (Exhibit 55).)

- e. Michigan: Secretary of State Joselyn Benson reported: "We have not seen any evidence of fraud or foul play in the actual administration of the election . . . What we have seen is that it was smooth, transparent, secure and accurate." (11/10/20 The New York Times, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 101).)
- f. Wisconsin: Elections Commission Administrator Meagan Wolfe reported: "At this time, no evidence has been provided that supports allegations of systematic or widespread election issues." (11/19/20 Wisconsin Star News, *No evidence has been provided that supports allegations of systemic or widespread election issues* (Exhibit 104).)

58. On November 12, 2020, members of the Election Infrastructure Government Coordinating Council ("GCC") Executive Committee and members of the Election Infrastructure Sector Coordinating Council ("SCC") published a joint statement regarding the security, reliability, and accuracy of the election results. (11/12/20 CISA, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* (Exhibit 105).) The members included:

- Cybersecurity and Infrastructure Security Agency ("CISA") Assistant Director Bob Kolasky
- U.S. Election Assistance Commission Chair Benjamin Hovland
- National Association of Secretaries of State ("NASS") President Maggie Toulouse Oliver
- National Association of State Election Directors ("NASED") President Lori Augino

- Escambia County (Florida) Supervisor of Elections David Stafford
- Brian Hancock (Chair of SCC, Unisyn Voting Solutions)
- Sam Derheimer (Vice Chair of SCC, Hart InterCivic)
- Chris Wlaschin (Election Systems & Software)
- Ericka Hass (Electronic Registration Information Center)
- Maria Bianchi (Democracy Works)

59. The joint statement stated: “The November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result.”

60. It continued: “When states have close elections, many will recount ballots. All of the states with close results in the 2020 presidential race have paper records of each vote, allowing the ability to go back and count each ballot if necessary. This is an added benefit for security and resilience. This process allows for the identification and correction of any mistakes or errors. **There is no evidence than any voting system deleted or lost votes, changed votes, or was in any way compromised.**” (emphasis in original).

61. And it stated: “Other security measures like pre-election testing, state certification of voting equipment and the U.S. Election Assistance Commission (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.”

62. Statements about the security, reliability, and accuracy of the 2020 U.S. election continued to be made by various government officials, entities, and committees into 2021. On June 23, 2021, the Republican-led Michigan Senate Oversight Committee, chaired by Trump ally Senator Ed McBroom, released a 55-page report, which stated that “The Committee found no evidence of widespread or systemic fraud in Michigan’s prosecution of the 2020 election” and

expressed total confidence that the state’s 2020 election outcome—that Biden defeated Trump by about 155,000 votes, or 2.8%—“represent[s] the true results of the ballots cast by the people of Michigan.” (6/23/21 Michigan Senate Oversight Committee, *Report on the November 2020 Election in Michigan* (Exhibit 133).)

63. On June 24, 2021, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, suspended Rudolph Giuliani from the practice of law after it determined that he had “made knowing false and misleading factual statements to support his claim that the presidential election was stolen from his client [Donald Trump],” based on “uncontroverted evidence” that he made “demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.” (*Matter of Giuliani*, 1976 A.D.3d 1, 4 (1st Dep’t 2021) (Exhibit 134).)

64. On June 27, 2021, reporting revealed that Attorney General William Barr had “received two briefings from cybersecurity experts at the Department of Homeland Security and the FBI” about the allegations of rigged voting machines, after which he and his team at the Department of Justice “realized from the beginning it was just bullshit.” Barr further disclosed that “even if the machines somehow changed the count, it would show up when they were recounted by hand,” and that Dominion’s machines were just “counting machine[s], and they save everything that was counted. So you just reconcile the two. There had been no discrepancy reported anywhere, and I’m still not aware of any discrepancy.” (6/27/21 *The Atlantic*, *Inside William Barr’s Breakup with Trump* (Exhibit 135).)

65. On August 3, 2021, a federal judge in Colorado disciplined two lawyers who filed a frivolous lawsuit based on lies against Dominion following the election, concluding that the

case was frivolous and brought in bad faith. In his 68-page opinion, Judge N. Reid Neureiter concluded: “Albeit disorganized and fantastical, the Complaint’s allegations are extraordinarily serious and, if accepted as true by large numbers of people, are the stuff of which violent insurrections are made.” (*O’Rourke et al. v. Dominion Voting Systems, Inc. et al.*, No. 20-cv-3747, 2021 WL 3400671 (D. Colo. Aug. 3, 2021) (Exhibit 136).)

66. The 2020 U.S. election for President and Vice President was not rigged. It was not compromised. It was not stolen.

**B. Mr. Lindell decided to sell an embellished story connecting voting machines to election fraud.**

67. Donald Trump had (and continues to have) a significant and loyal following. Donald Trump received approximately 70 million votes during the 2020 U.S. election. Donald Trump had over 88 million Twitter followers. His popularity was a tremendous asset.

68. Mr. Lindell had already profited from President Trump’s popularity before the election. Mr. Lindell’s MyPillow products had received Donald Trump’s endorsements. Mr. Lindell had personally received Donald Trump’s endorsements. On information and belief, Mr. Lindell’s (and, by extension, MyPillow’s) bottom line was flourishing in part due to President Trump’s endorsement.

69. Mr. Lindell saw another business opportunity after President Donald Trump and Michael Pence lost the 2020 election. When it became clear that Joe Biden and Kamala Harris had officially won, Mr. Lindell latched onto a false narrative that the election was “stolen.” Mr. Lindell decided to blame the voting machines. Mr. Lindell knew that he and his MyPillow products would garner attention in the media and stay on Donald Trump’s supporters’ minds by spreading a false narrative with a technical premise: voting election technology is not secure,

was hacked by China, and the voting machine companies stole the election. Smartmatic was to be one of the voting machine companies at the center of this false narrative.

70. After the election, Mr. Lindell heard Mr. Rudolph Giuliani's and Ms. Sidney Powell's assertions that voting election technology was manipulated. (*Smartmatic v. Fox Corp., et al.*, N.Y. Index No. 151136/2021, Compl. at ¶¶ 89–94 (Exhibit 138).) Mr. Lindell also saw Fox News and others, such as Newsmax and OANN, broadcasting coverage about voting machine technology being hacked in favor of Joe Biden and Kamala Harris.

71. Mr. Lindell knew that if he endorsed and grew this lie, he would continue rising to stardom in Donald Trump-supporter circles and, in turn, grow his personal and company wealth. Mr. Lindell decided to build off the story that the Smartmatic and Dominion voting technology companies were to blame for Donald Trump's and Michael Pence's loss in the 2020 U.S. election by claiming that the election was hacked.

72. Mr. Lindell decided he would further embellish a preconceived story of Smartmatic's voting machine hacking and manipulation. He asserted that the 2020 U.S. election had been rigged in favor of Joe Biden and Kamala Harris through "*the machines*." Mr. Lindell claimed to have scientific, mathematical, and forensic "100% proof" of this election fraud by the machines.

73. Mr. Lindell, of course, had no evidence that Smartmatic machines were hacked in the 2020 U.S. election or otherwise used to rig the election for Joe Biden and Kamala Harris. But Mr. Lindell knew that manufacturing "evidence" and making it seem as if that "evidence" was absolute and irrefutable would make for a more believable story.

74. The story would also make Mr. Lindell (and MyPillow) money. Mr. Lindell would be able to cast himself as President Trump's only remaining friend and ally. He could also

use the attention brought to him as the primary, continuing warrior against the voting technology machines to sell his books and his MyPillow products.

**C. Mr. Lindell engaged in a disinformation campaign against Smartmatic.**

75. In December 2020 and January 2021, after all 50 states and Washington, D.C. certified their presidential election results, Mr. Lindell launched his attack on voting technology companies. During multiple appearances (both live at rallies in Washington, D.C. and online), Mr. Lindell claimed that the algorithms in voting machines were programmed to steal votes from Donald Trump and Michael Pence.

76. Mr. Lindell and MyPillow sponsored a 20-city “March for Trump” bus tour promoting the January 6, 2021 rally in Washington, D.C. (1/26/21 BuzzFeed News, *How ‘The Women for America First’ Bus Tour Led to The Capitol Coup Attempt* (Exhibit 129).) The MyPillow logo appeared on the bus that toured around the United States.

77. On the bus tour, Mr. Lindell was given a platform to talk about the election. He told the audiences that “Donald Trump got so many votes that they didn’t expect that it broke the algorithms in those [voting] machines.” (*Id.*)



78. On January 5, 2021, Mr. Lindell spoke at the “Save the Republic” rally at the United States Capitol in Washington, D.C. He continued to spread his lie that election voting technology stole the 2020 U.S. election.

79. On January 20, 2021, Joe Biden and Kamala Harris were sworn in as the President and Vice President. By then, several media sources (including Fox News and Newsmax) broadcast “clarification” program segments attempting to walk back their defamatory claims that Smartmatic was engaged in widespread election fraud. Mr. Lindell knew all of this. But Mr. Lindell believed that if he perpetuated the story against Smartmatic and convinced the public that the election was fraudulent through newfound “evidence,” he would keep his name in the news.

80. Mr. Lindell’s calculated defamation campaign against Smartmatic was ~~three-pronged~~four-pronged. First, Mr. Lindell created and published a series of defamatory documentary videos purporting to release “evidence” and “facts” corroborating that Smartmatic’s voting technology stole the 2020 U.S. election.

81. Second, Mr. Lindell appeared on at least 13 Internet radio and television shows promoting his documentaries, driving traffic to his websites, advertising MyPillow, and defaming Smartmatic. During these programs, Mr. Lindell promised that he had “evidence” to support his defamatory claims about Smartmatic.

82. Third, Mr. Lindell held an in-person and Internet live-streamed “Cyber Symposium” from August 10 to 12, 2021, during which he purported to uncover even more evidence that election voting machines, including Smartmatic’s, rigged the 2020 election. Each of these irreparably harmed Smartmatic.

83. Fourth, years after the 2020 presidential election, Mr. Lindell continued to perpetuate the falsehood that Smartmatic manipulated votes through videos he published on his self-created social media website, FrankSpeech.com, and through other mediums.

**1. Mr. Lindell’s Defamation Campaign Against Smartmatic, Prong 1: The “Absolute” Documentary Series**

84. ~~83.~~ In the first prong of his defamatory campaign, Mr. Lindell filmed, produced, and broadcast a four-part “Absolute” documentary series. In this series, Mr. Lindell claimed to reveal evidence that the 2020 U.S. election was stolen through election voting machine technology, including Smartmatic’s. All four of Mr. Lindell’s self-produced and published documentaries defamed Smartmatic.

85. ~~84.~~ In his first documentary, “Absolute Proof,” Mr. Lindell and his guest speakers claimed that China infiltrated the 2020 U.S. election through voting machine technology, including Smartmatic’s. (*Absolute Proof* (Exhibit 1); Screenshots, *Absolute Proof* (Exhibit 2).) The two-hour documentary was live streamed by OANN and RSN on their respective websites. It was also streamed by WVV Broadcast Network and posted to Mr. Lindell’s personal Facebook page.

86. ~~85.~~ From February 5 to February 8, 2021, OANN broadcast “Absolute Proof” thirteen times. On February 11, 2021, OANN broadcast “Absolute Proof” a fourteenth time, this time interspersed with an interview of Mr. Lindell by Steve Bannon. (*A Screening and Conversation of Absolute Proof* (Exhibit 14); Screenshots, *A Screening and Conversation of Absolute Proof* (Exhibit 15).)





87. ~~86.~~ Mr. Lindell posted the first documentary to YouTube, Vimeo, Facebook, his self-created social media website FrankSpeech.com, and multiple of his personal websites, including LindellTV.com and MichaelJLindell.com. It also appears on Rumble and TheAmericanReport.org, among other websites.

88. ~~87.~~ In “Absolute Proof” Mr. Lindell introduced himself as “the CEO of MyPillow.” He then claimed that he had unequivocal proof that the 2020 U.S. election was rigged through election voting technology, including Smartmatic’s:

Mr. Lindell: I think it was like January 9th, all of a sudden, these people, they brought me some, a piece of evidence, that’s 100% proved. It’s like a print of inside the machine of the timestamp that showed another country, other countries attacking us, hacking into our election through these machines, and it shows a vote’s flipped. And I’m going wow, I got to get this out there. And from that point on, I started putting it out there...

89. ~~88.~~ Mr. Lindell’s “Absolute Proof” documentary included several guest speakers: Mary Fanning, Phil Waldron, Matthew DePerno, Russell Ramsland, Shiva Ayyadurai, Patrick Colbeck, and Melissa Carone. As the creator and a publisher of this documentary on multiple

platforms, Mr. Lindell republished and endorsed all of the statements that each of these individuals made during his documentary.

90. ~~89.~~ Colonel Phil Waldron said at the beginning of the “Absolute Proof” documentary:

Colonel Waldron: So a critical capability for any of this to happen are the inherent vulnerabilities that were built into ES&S and Dominion software, which is, you know, again, we’ve proven through [] our work that ***this is all related directly back to the soft, Smartmatic, Smartmatic, SGO Smartmatic software core... the board of SGO Smartmatic***, because they own a, an air purification company. So just think about it, if you get to pick an administration that is favorable to your company, say if they [passed] the Green New Deal, and you’re going to make billions and billions of dollars off of government-mandated air purification systems and public buildings... ***you would spend quite a bit of money on the frontside to make sure the election was done.***



91. ~~90.~~ Mr. Lindell then propagated the Smartmatic-specific theme himself:

Mr. Lindell: So why [] ***would Texas***, they denied these Dominion ones, and in your opinion, so they must have looked at them and said there’s something there we don’t like, but then they, over here, ***with Smartmatic and these other ones, they were okay with that? What would be your opinion of why, why one, they would deny one machine*** that, because they’re afraid of election fraud, and, and over here, they accepted that one?

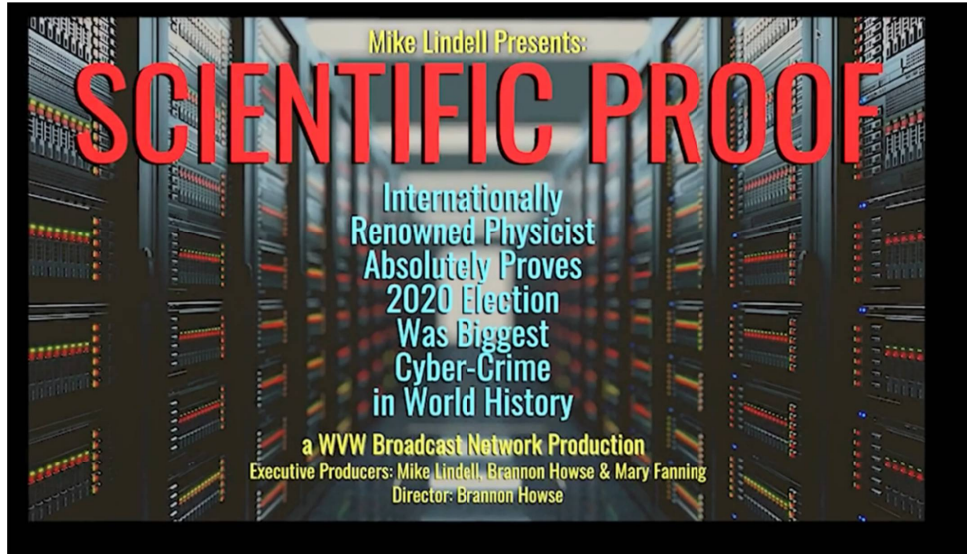
Mr. Ramsland: I think that it sometimes has more to do with politics and influence, who gets through and who doesn’t [] ***for the machines.***

92. ~~91.~~ Mr. Lindell and Colonel Waldron referred specifically to Smartmatic in “Absolute Proof.” Each and every one of the subsequent statements about “machines” and voting machine companies presented in the documentary led a reasonable viewer to believe the facts were referring to Smartmatic. Each of these statements appears in Section III, below.

93. ~~92.~~ In the final minutes of “Absolute Proof,” Mr. Lindell claimed that the documentary showed “100%” that America was attacked through voting technology machines (including and implying Smartmatic):

Mr. Lindell: And [] we’ve just shown everybody in the world 100% evidence that this was an attack on our country and is still under attack by China and other countries through the use of these machines used in our election.

94. ~~93.~~ Mr. Lindell’s second documentary was called “Scientific Proof.” It further alleged that the 2020 U.S. election was hacked through voting technology machines, including Smartmatic’s. (*Scientific Proof* (Exhibit 3); Screenshots, *Scientific Proof* (Exhibit 4).) Mr. Lindell published “Scientific Proof,” at least, on LindellTV.com, FrankSpeech.com, and MichaelJLindell.com. The documentary also appears on Rumble and TheAmericanReport.org. OANN aired “Scientific Proof” three times on April 3, 2021, and one time on April 4, 2021.



95. ~~94.~~ Mr. Lindell had an ongoing dialogue with guest Dr. Douglas G. Frank during his second documentary, “Scientific Proof.” As the creator and a publisher of this documentary on multiple platforms, Mr. Lindell republished and endorsed all of the statements of Dr. Douglas G. Frank.

96. ~~95.~~ Mr. Lindell unequivocally stated in “Scientific Proof” that the “name of the machine” does not matter because all voting technology machines were responsible for “flipping” votes in the 2020 U.S. election:

Mr. Lindell: I just want everyone to know that why we’re showing other states and not just the swing state[s]. It was every state, it happened in your state []. Texas, when they said, oh, we didn’t use the Dominion machines. ***Doesn’t matter, the name of the, the name of the machine doesn’t matter.***

Dr. Frank: No.

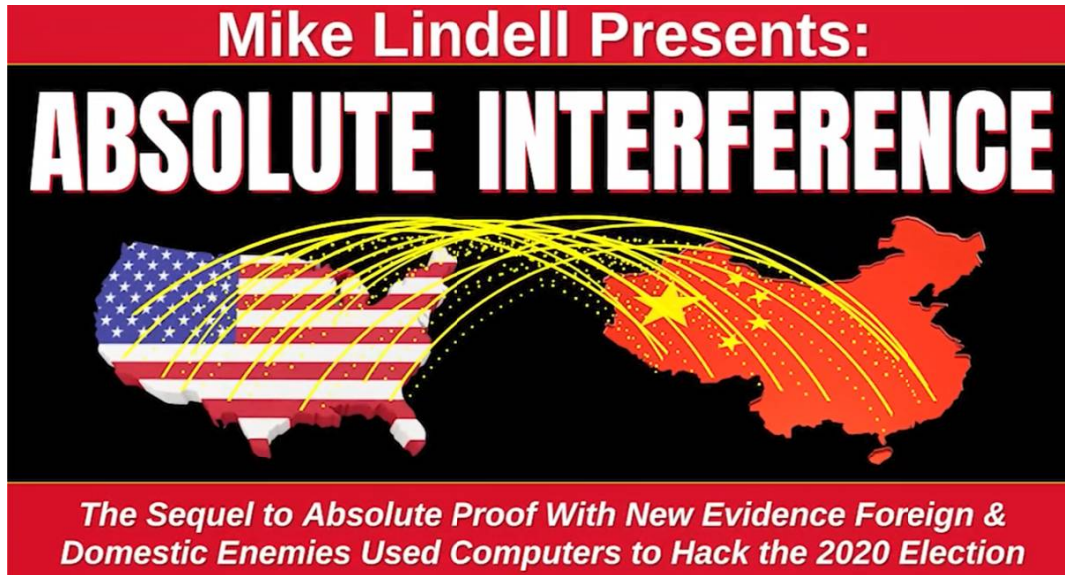
Mr. Lindell: ***Smartmatic, ES&S, don’t matter...***



97. ~~96.~~ Since Mr. Lindell referred specifically to Smartmatic, each and every one of the subsequent statements about “machines” and voting machine companies presented in the documentary led a reasonable viewer to think the facts were referring to Smartmatic. Each of these statements appears in Section III, below.

98. ~~97.~~ Mr. Lindell’s third documentary was called “Absolute Interference.” (*Absolute Interference* (Exhibit 5); Screenshots, *Absolute Interference* (Exhibit 6).) This was billed as the “Sequel to Absolute Proof with New Evidence Foreign & Domestic Enemies Used Computers to Hack the 2020 Election.” (The “computers” Mr. Lindell was referring to in the title are the voting technology machines, including Smartmatic’s).





99. ~~98.~~ Mr. Lindell published “Absolute Interference” on his personal websites, LindellTV.com, FrankSpeech.com, and MichaelJLindell.com. The video also appears on Rumble and TheAmericanReport.org. OANN broadcast “Absolute Interference” on April 22, 2021.

100. ~~99.~~ Mr. Lindell had several guest speakers on his third documentary, “Absolute Interference,” including General Michael Flynn and Dr. Douglas G. Frank. As the creator and a publisher of this documentary on multiple platforms, Mr. Lindell republished and endorsed all of the statements of these individuals.

101. ~~100.~~ Mr. Lindell began the documentary with a clip from General Michael Flynn, which included the following:

Mr. Flynn: Now we’re into the 21st century, and we have these machines. And these machines, what we do know, *one of the things that we do know for certain, is that the machines are connected to the Internet.* Our FBI and CISA, the cyber arm of the Department of Homeland Security, yeah, they gave out these alerts, and they said, hey, Iran is interfering in our election process. *The machines are not supposed to be connected to the Internet. They’re supposed to be free of the Internet. Well, if it’s connected to the Internet, that means that anybody in any country, and I can name some of the countries, so we know China...*



102. ~~101.~~ Mr. Lindell played another introductory clip at the beginning of “Absolute Interference,” this time with Dr. Douglas G. Frank. Mere moments into the documentary, Mr. Lindell and Douglas Frank factually asserted and implied that Smartmatic voting technology was hacked in the 2020 U.S. election and that Smartmatic machines were connected to the Internet:

Mr. Lindell: The same thing, the same machines, the same attack, the same people, the same corruption that went on, the same crime against humanity was all, crossed all those states.

\*\*\*

Mr. Lindell: 100% impossible, had to be machines.

Dr. Frank: Yes.

Mr. Lindell: And they had to be online.

Dr. Frank: Constantly online

Mr. Lindell: Constantly online, everybody. No way you could ever do that humanly...

Dr. Frank: When I’ve shown this other people they’ve said, well, gee, how could people do that? And I say - -

Mr. Lindell: They can’t, it has to be machines --

Dr. Frank: Has to be.

Mr. Lindell: *And it rhymes with Dominion, and it rhymes with Smartmatic* and ES&S, all these machines that were used out there cannot be done by humans and you have to have access before, during and after.

103. ~~102.~~ Mr. Lindell pointed out in “Absolute Interference” that “Smartmatic” is one of the “machines” he will be referring to throughout the rest of the documentary:

Mr. Lindell: I have proof, 100% proof that *our country was attacked by China*, by communism coming in, *this foreign interference to our elections, through the machines, Dominion, Smartmatic, ES&S, all of them.*

104. ~~103.~~ Since Mr. Lindell referred specifically to Smartmatic in “Absolute Interference,” each and every one of the subsequent statements about “machines” and voting machine companies presented in the documentary led a reasonable viewer to think the facts were referring to Smartmatic. Each of these defamatory statements appears in Section III, below.

105. ~~104.~~ Mr. Lindell’s fourth documentary, “Absolutely 9-0,” further alleged that the 2020 U.S. election was hacked through voting machine technology, including Smartmatic’s. (*Absolutely 9-0* (Exhibit 7); Screenshots, *Absolutely 9-0* (Exhibit 8).) The premise of the documentary was that once the Supreme Court heard the “evidence” against the voting machine companies (including Smartmatic) it would vote 9-0 in favor of overturning the election.

106. ~~105.~~ Mr. Lindell published “Absolutely 9-0” on his personal websites, LindellTV.com, FrankSpeech.com and MichaelJLindell.com. OANN broadcast “Absolutely 9-0” on June 5 and June 6, 2021.

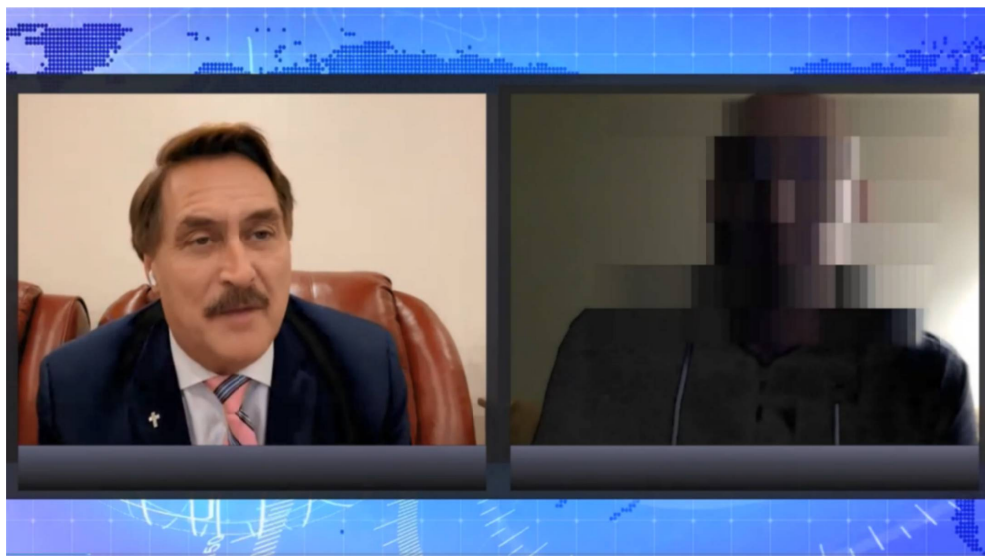
107. ~~106.~~ Mr. Lindell had an anonymous guest on his fourth documentary “Absolutely 9-0,” who was purportedly an unnamed cybersecurity “expert.” As the creator and a publisher of this documentary on multiple platforms, Mr. Lindell republished and endorsed all of the statements of this individual.





108. ~~107.~~ Mr. Lindell began the fourth documentary by naming Smartmatic as a main perpetrator in an alleged cyber-attack against the United States during the 2020 election:

Mr. Lindell: Hello everyone I'm Mike Lindell and as you all know on January 9th I received evidence of a cyber attack orchestrated by China on our 2020 election. I took that one piece of evidence, and I just went all in. This was something different, nobody had seen. ***This was something that came through the machines, the Dominion machines, the Smartmatic and other machines.*** This was a cyber attack. I didn't know anything about cyber attacks. And boy, I learned, I had to learn real fast... ***this was 100% an attack by China on our country through these machines.***



109. ~~108.~~ Since Mr. Lindell referred specifically to Smartmatic, each and every one of the subsequent statements about “machines” and voting machine companies presented in the documentary led a reasonable viewer to think the facts were referring to Smartmatic. Each of these defamatory statements appears in Section III, below.

**2. Mr. Lindell’s Defamation Campaign Against Smartmatic, Prong 2: Media Appearances**

110. ~~109.~~ The second prong of Mr. Lindell’s defamation campaign against Smartmatic was to appear on podcasts, Internet radio shows, and television shows to discuss how Smartmatic rigged the 2020 U.S. election. Mr. Lindell wanted to reach more than just individuals who self-selected to watch his documentary. Mr. Lindell aimed to spread his message about Smartmatic rigging the election as broadly as possible.

111. ~~110.~~ In doing so, Mr. Lindell appeared on at least 13 media shows and defamed Smartmatic:

- a. On February 5, 2021, Mr. Lindell appeared on Steve Bannon’s “War Room” podcast (*War Room* podcast, February 5, 2021 (Exhibit 9); Screenshots, *War Room* podcast, February 5, 2021 (Exhibit 10).);
- b. On February 6, 2021, Mr. Lindell appeared on Steve Bannon’s “War Room” podcast (*War Room* podcast, February 6, 2021 (Exhibit 11).);
- c. On February 8, 2021, Mr. Lindell appeared on OANN’s “Real America with Dan Ball” (*Real America with Dan Ball*, February 8, 2021 (Exhibit 12); Screenshots, *Real America with Dan Ball*, February 8, 2021 (Exhibit 13).);
- d. On February 11, 2021, Mr. Lindell appeared on an OANN Special with Steve Bannon (OANN, *A Screening and Conversation of Absolute Proof*,

- February 11, 2021 (Exhibit 14); Screenshots, OANN, *A Screening and Conversation of Absolute Proof*, February 11, 2021 (Exhibit 15).);
- e. On February 24, 2021, Mr. Lindell appeared on “The Pete Santilli Show” (*The Pete Santilli Show*, February 24, 2021 (Exhibit 16); Screenshots, *The Pete Santilli Show*, February 24, 2021 (Exhibit 17).);
  - f. On March 26, 2021, Mr. Lindell appeared on Steve Bannon’s “War Room” podcast (*War Room* podcast, March 26, 2021 (Exhibit 18) Screenshots, *War Room* podcast, March 26, 2021 (Exhibit 19).);
  - g. On March 30, 2021, Mr. Lindell appeared on the “Eric Metaxas Radio Show” (*Eric Metaxas Radio Show*, March 30, 2021 (Exhibit 20); Screenshots, *Eric Metaxas Radio Show*, March 30, 2021 (Exhibit 21).);
  - h. On April 1, 2021, Mr. Lindell appeared on “Indivisible” with John Stubbins (*Indivisible with John Stubbins*, April 1, 2021 (Exhibit 22); Screenshots, *Indivisible with John Stubbins*, April 1, 2021 (Exhibit 23).);
  - i. On April 8, 2021, Mr. Lindell appeared on “USA Watchdog” with Greg Hunter (*USA Watchdog*, April 8, 2021 (Exhibit 24); Screenshots, *USA Watchdog*, April 8, 2021 (Exhibit 25).);
  - j. On April 9, 2021, Mr. Lindell appeared on Steve Bannon’s “War Room” podcast (*War Room* podcast, April 9, 2021 (Exhibit 26); Screenshots, *War Room* podcast, April 9, 2021 (Exhibit 27).);
  - k. On May 3, 2021, Mr. Lindell appeared on OANN’s “Newsroom” program with Pearson Sharp (Transcript, *OANN Newsroom*, May 3, 2021 (Exhibit 108); Screenshots, *OANN Newsroom*, May 3, 2021 (Exhibit 109).);

- l. On May 3, 2021, Mr. Lindell appeared on Steve Bannon’s “War Room” podcast (*War Room* podcast, May 3, 2021 (Exhibit 28); Screenshots, *War Room* podcast, May 3, 2021 (Exhibit 29).); and
- m. On May 8, 2021, Mr. Lindell appeared on Steve Bannon’s “War Room” podcast (*War Room* podcast, May 8, 2021 (Exhibit 30); Screenshots, *War Room* podcast, May 8, 2021 (Exhibit 31).).

112. ~~111.~~ These programs reached a wide audience. For example, Bannon’s “War Room” podcast aired each night on Newsmax. Newsmax’s viewership was soaring. Newsmax’s ratings jumped almost ten times greater post-election than they had been before November 2020. (11/18/20 Associated Press, *Trump-Friendly Newsmax seeks to cut into Fox’s viewership* (Exhibit 126).)



113. ~~112.~~ Take another example. Mr. Lindell appeared on OANN programming with Dan Ball. OANN’s viewership was up post-election, too. The OANN website peaked at 15 million viewers per month from November through January. (10/6/2021 Reuters, *Special Report: How AT&T helped build far-right One America News* (Exhibit 132).)



114. ~~113.~~ Defamatory statements made about Smartmatic during each of these media appearances are listed in Section III, below.

115. ~~114.~~ Multiple times during the media prong of his disinformation campaign, Mr. Lindell made it seem as if he had evidence backing up his claims that Smartmatic stole the 2020 U.S. election. For example, Mr. Lindell appeared on the “Eric Metaxas Radio Show” on March 30, 2021, to promote his documentaries. (Exhibit 20.) In that program segment, Mr. Lindell said:

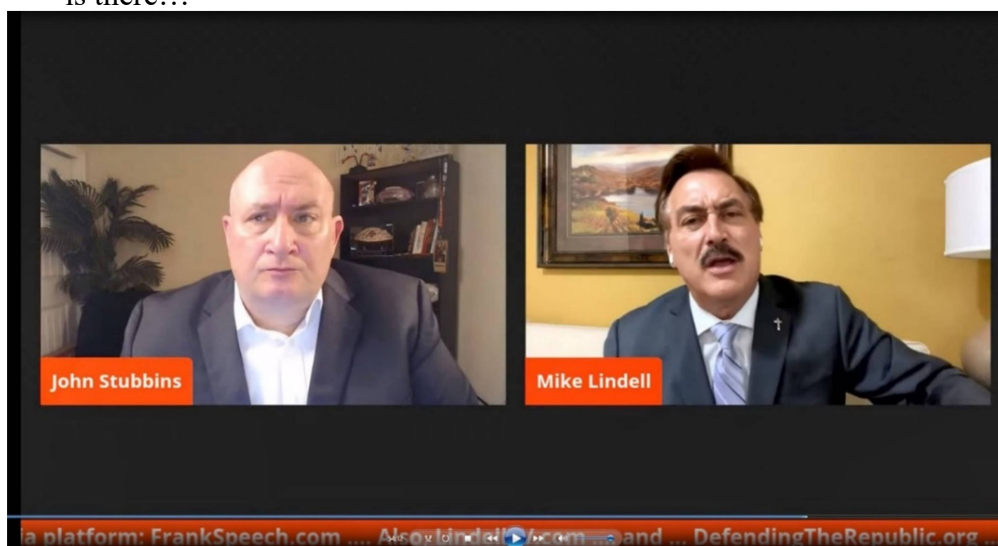
“We got [] whistleblowers you’re gonna see. We have people that worked on the inside [] maybe they’ll come clean and get lesser sentences. [] I spent millions of dollars investigating [] Dominion, Smartmatic... the people behind these attacks, investigators that went over and cyber people that went over, got the IPs, and the IDs of people in China...”





116. ~~115.~~ Take another example. On April 1, 2021, Mr. Lindell appeared on “Indivisible with John Stubbins” and said, “I’m going to be dumping evidence for the next five, six weeks before we get before the Supreme Court.” (Exhibit 22.) He also said:

[H]ere’s what happened. This was a cyber attack on our country. Donald Trump really won 80 million to 66 million. All the evidence is there, I’ve already got all the evidence, it’s already going to be, it’s been on Absolute Proof. But now we have validated every IP, every ID address of all the computers here and over in China, and other countries. So all the evidence is there...



117. ~~116.~~ Mr. Lindell never showed any of the “evidence” he purportedly had. There was no evidence showing a cyber-attack on the 2020 U.S. election.

**3. Mr. Lindell’s Defamation Campaign Against Smartmatic, Prong 3: “Mike Lindell’s Cyber Symposium”**

118. ~~117.~~ The third prong of Mr. Lindell’s defamation campaign against Smartmatic was to hold a two-day, in-person, live-streamed, and self-titled Cyber Symposium in Sioux Falls, South Dakota from August 10 to 12, 2021. The purpose of “Mike Lindell’s Cyber Symposium” was to prove that China helped Joe Biden steal the 2020 presidential election using voting machine technology. (8/15/2021, Business Insider, *Here’s what happened at Mike Lindell’s cyber symposium...* (Exhibit 131).)

119. ~~118.~~ Mr. Lindell claimed he had 37 terabytes of information “related to voter fraud” to reveal at the Cyber Symposium. In an effort to garner viewership and instill credibility in his information, Mr. Lindell offered \$5 million to anyone who could *disprove* the data if they attended the event in person. (*Id.*)

**BREAKING: Mike Lindell Offers \$5 Million Award To Anyone Who Can Prove  
Cyber Data From November Election Isn't Valid**

Voting Machine Fraud / By LindellTV



Mike Lindell's explosive documentaries, [Absolute Proof](#), and [Absolute Interference](#) have been watched by almost 200 million people from around the world. The first documentary explains how a large team of forensic and IT experts have determined massive voter fraud took place in the November election via internet connections within voting machines. The follow-up documentary, *Absolute Interference* takes a deep dive into statistical anomalies with voters and voter registrations as explained by data modeling expert Dr. Douglas G. Frank. It also includes evidence that allegedly proves IP addresses from foreign countries were connected to our voting machines to other countries.

120. ~~119.~~ Mr. Lindell live-streamed the “Mike Lindell Cyber Symposium” from his websites LindellTV.com and FrankSpeech.com. The “Mike Lindell Cyber Symposium” was also livestreamed on Rumble and RSNB, among other websites.

121. ~~120.~~ Mr. Lindell hosted various guest speakers at his Cyber Symposium, including Douglas Frank, Phil Waldron, and Joe Oltmann. As the creator and a publisher of “Mike Lindell’s Cyber Symposium” on multiple platforms and live in-person, Mr. Lindell republished and endorsed all of the statements of his guest speakers during the programming.





122. ~~121.~~—Much of the content over the two-day Cyber Symposium defamed Smartmatic by alleging that the 2020 U.S. election was stolen through voting machines. Three taped segments of the Cyber Symposium specifically mentioned Smartmatic:

- a. First, a video narrated by Phil Waldron, re-aired multiple times each day during the Cyber Symposium (Cyber Symposium, Phil Waldron (Exhibit 34); Screenshots, Cyber Symposium, Phil Waldron (Exhibit 35).);
- b. Second, a monologue by Mr. Lindell during the Cyber Symposium (Cyber Symposium, Lindell (Exhibit 32); Screenshots, Cyber Symposium, Lindell (Exhibit 33).); and
- c. Third, a speech by Joseph Oltmann during the Cyber Symposium (Cyber Symposium, Oltmann (Exhibit 36); Screenshots, Cyber Symposium, Oltmann (Exhibit 37).)

123. ~~122.~~—The Phil Waldron video alleged that Smartmatic software was used in “key battleground states” during the 2020 U.S. election. (Cyber Symposium, Phil Waldron (Exhibit

34).) The video purported to reveal the “inside story of the conspiracy to save the 2020 election” through “a well-funded cabal” of “left wing” people.



124. ~~123.~~ The Phil Waldron video was played multiple times throughout the Cyber Symposium. The video was also posted separately to Rumble.

125. ~~124.~~ Mr. Lindell’s monologue during the Cyber Symposium defamed Smartmatic by claiming that Smartmatic machines are “built as a tool to take countries.” (Cyber Symposium, Lindell (Exhibit 32).) Mr. Lindell claimed to have spent “millions of dollars” investigating this.

126. ~~125.~~ Joseph Oltmann defamed Smartmatic during the Cyber Symposium by claiming that Smartmatic uses the same hardware as Dominion Voting Systems. Mr. Oltmann said, “So they’re using the same hardware, they just have a new badge put on it, one says Dominion Voting, and one says Smartmatic.” (Cyber Symposium, Oltmann (Exhibit 36).)

127. ~~126.~~ Mr. Oltmann also presented a graph, allegedly showing that “people that worked for ESNS [sic], Hart, Dominion Voting Systems, Clear Ballot [and] Smartmatic” were all interrelated. “[T]hey basically recycle people through the company.” (Cyber Symposium, Oltmann (Exhibit 36).)



130. The fourth prong of Mr. Lindell’s defamation campaign against Smartmatic was to continue to defame Smartmatic and its voting technology even after Smartmatic brought this lawsuit.

131. On November 4, 2022, Mr. Lindell posted a video to his social media website FrankSpeech.com. (*Big News! We Have The Smartmatic Cast Vote Records From LA County and They Show Computer Manipulation*, FrankSpeech.com, November 4, 2022 (Exhibit 143).)

132. In the November 4, 2022 video, Mr. Lindell stated: “Smartmatic . . . ties to Dominion like you wouldn’t believe.” (*Id.*)

133. Also in the November 4, 2022 video, Mr. Lindell’s guest, Jeff O’Donnell, stated that he had examined the “cast vote records” for LA County and concluded based on his analysis that “it shows the same pattern, especially when looking at the absentee mail-in votes . . . the breaking news is, LA County and Smartmatic join the list of people who use what I call the ‘Mesa pattern.’” (*Id.*)

134. Mr. Lindell interjected, “which is computer manipulation, correct?” (*Id.*)

135. Mr. O’Donnell responded that “the type of pattern that we see, it’s not how people vote, it’s how computers vote. It has to be.” (*Id.*)

136. For the entirety of the November 4, 2022 video, Mr. Lindell presented a banner at the bottom of the screen displaying a promo code viewers could use to save up to 66% off an order placed at MyPillow.com. (*Id.*)



137. On January 4, 2023, Mr. Lindell again posted a video to his social media website FrankSpeech.com. (*Updates On The Smartmatic Lawsuit and The Cast Vote Records*, FrankSpeech.com, January 4, 2023 (Exhibit 144).)

138. In the January 4, 2023 video, Mr. Lindell stated, “let me tell you about Smartmatic . . . in the 2020 election, do you think L.A. County was computer-manipulated or not? . . . Of course it was! And now we have the proof.” (*Id.*)

139. In the same video, Mr. Lindell told his viewers that “we have an algorithm that came out of a Mesa County machine . . . those same algorithms of Smartmatic . . . this is Smartmatic and Dominion . . . .” (*Id.*)

140. For the entirety of the January 4, 2023 video, Mr. Lindell presented a banner at the bottom of the screen displaying a promo code viewers could use to save up to 66% off an order placed at MrPillow.com. (*Id.*)





141. On January 31, 2023, Mr. Lindell posted to Twitter to announce that he was going to be a guest on *Jimmy Kimmel Live!*, a late-night talk show broadcasted across the United States. Mr. Lindell tweeted: “I know I will be attacked but we have to get rid of the voting machines and I am willing to be humiliated to help get the word out and save our county!” (1/31/23 Twitter, @realMikeLindell (Exhibit 145).)

142. On February 1, 2023, Mr. Lindell appeared on *Jimmy Kimmel Live!* Mr. Lindell appeared on the show inside a “claw machine.” During that show, Mr. Lindell made the following statements:

- a. Jimmy Kimmel asked Mr. Lindell, “I know you are distrustful of machines . . . now that you are inside one, do you feel differently?” In response, Mr. Lindell stated, “No. Same thing. There are . . . computers can be rigged

out there, absolutely, in elections. You know that.” (MyPillow Mike Lindell’s Interview from Inside a Claw Machine, Jimmy Kimmel Live!, February 1, 2023 (Exhibit 146).)

b. Mr. Kimmel asked Mr. Lindell about the latter’s failed bid for Chair of the Republican National Convention. Specifically, Mr. Kimmel asked, “do you believe this was a rigged election too?” Mr. Lindell responded, “No, absolutely not, Jimmy, cause there was no machines involved. It was paper ballots, hand counted.” (Id.)

c. After Mr. Kimmel asked Mr. Lindell about his feelings on various other kinds of machines, i.e., ice machines, Mr. Lindell stated, “Jimmy, you can make fun of that, but we know the machines I’m talking about are voting machines, computers used in elections, because we wanna have elections and not selections.” (Id.)

d. Mr. Lindell subsequently claimed to possess evidence of election fraud and said, “we gave it to the Facebook fact checkers. Alan Duke, he looked at it and he won’t . . . now he just went away cause he knows it was true.” (Id.)

**D. Mr. Lindell presented his statements about Smartmatic as factual and based on evidence.**

143. ~~129.~~ Mr. Lindell did not present his statements regarding Smartmatic as opinions, rhetorical hyperbole, or speculation. He did not present his statements regarding Smartmatic as educated guesses, possibilities, rumors, or mere allegations. Mr. Lindell presented his statements

regarding Smartmatic as fact. Fact supported by “100% proof,” “scientific evidence” and “forensic evidence.”

144. ~~130.~~ First, Mr. Lindell’s entire four-part documentary series was premised on the claim that he was uncovering groundbreaking evidentiary proof of voting machines’ vulnerability and fraud and exposing that evidentiary proof for the general public. For example:

- a. Mr. Lindell states in his opening monologue of the “Absolute Proof” documentary, “I think it was like January 9th, all of a sudden, these people, *they brought me some, a piece of evidence that’s 100% proved. It’s like a print-out of inside the machine of the timestamp* that showed another country, other countries attacking us, hacking into our election through these machines, and it shows a vote’s flipped. *And I’m going, wow, I got to get this out there. And from that point on, I started putting it out there... [T]onight, you’re going to see what they’re hiding, you’re going to see on this show.*” (*Absolute Proof*, (Exhibit 1).)
- b. Mr. Lindell also states in the “Absolute Proof” documentary, “You know, *what we’re talking about here today is specific, these machines that were used to, to hack into our election* and, and by foreign countries, including China...” (*Absolute Proof*, (Exhibit 1).)
- c. Mr. Lindell states in his opening monologue of the “Absolutely 9-0” documentary, “[A]s you all know on January 9th *I received evidence* of a cyber attack orchestrated by China on our 2020 election. *I took that one piece of evidence and I just went all in. This was something different, nobody had seen. This was something that came through the machines, the Dominion machines, the Smartmatic and other machines.*” (*Absolutely 9-0* (Exhibit 7).)
- d. Mr. Lindell told Steven Bannon on OANN, “You know, *I have went out here with everything I have, because I’m 100%, 100% that we have all the proof. That’s why it’s called ‘Absolute Proof.’ 100%.*” (*A Screening and Conversation of Absolute Proof* (Exhibit 14).)

145. ~~131.~~ Second, Mr. Lindell presented and endorsed other speakers with alleged scientific, cybersecurity, mathematics, and military operation credentials to bolster his own credibility. Mr. Lindell claimed that the statements he made about Smartmatic were supported by these “experts.” For example:



a. In Mr. Lindell's "Scientific Proof" documentary, Mr. Lindell interviewed Dr. Douglas G. Frank, giving him the following introduction:

a) Mr. Lindell: "What's your background? Tell everybody." Dr. Frank: "I'm a PhD scientist, *I've been doing science for about 40 years aggressively, got about 60 scientific publications.* Some of them were cover articles and invited articles, because I happen to make a pretty good discovery once, back in the early 90s. I left academics in 1996. And ever since then, I've been teaching at a special school for extraordinarily gifted kids, as well as working on new inventions and analyzing election data lately." Mr. Lindell: "*Right. So very overqualified everybody...*" (Exhibit 3).

b. In Mr. Lindell's "Absolutely 9-0" documentary, Mr. Lindell interviewed an anonymous cybersecurity expert, giving him the following introduction:

a) Mr. Lindell: "And with us right now is one of my *cybersecurity experts.* These guys are the best and this guy has *over 20 years of experience* working in both the private sector and with government law enforcement and intelligence agencies. He has many *information in cybersecurity certifications that specialize in advanced adversary detection, mitigation, and elimination.* And here he is now." (Exhibit 7).

c. In Mr. Lindell's "Absolute Proof" documentary, Mr. Lindell interviewed Colonel Phil Waldron with the following introduction:

a) Mr. Waldron: "Yeah, so my, *my background in the military is with influence operations, information operations, information warfare,* if you will... And again, as a, as a information warfare officer that's what I did. *I looked for vulnerabilities and ways to attack systems to create a strategic advantage* for US friendly forces." (Exhibit 1).

d. In Mr. Lindell's "Absolute Proof" documentary, Mr. Lindell interviewed Russell Ramsland, giving him following introduction:

a) Mr. Lindell: "So now we have with us Russell Ramsland. *He's a founding member of Allied Security Operational Group.* They're based in Dallas, Texas, and *they do cyber forensics and security.*" (Exhibit 1).

e. In Mr. Lindell's "Absolute Proof" documentary, Mr. Lindell interviewed Dr. Shiva Ayyadurai, giving him the following introduction:

a) Mr. Lindell: "So now we have with us, Dr. Shiva. *He has four MIT degrees. He's an expert at system science and pattern analysis* and I met him four weeks ago... *And he knows all about these machines* now and we're going to hear some of the stuff that I found out [] this is a, *absolutely validates this election fraud with these machines.*" (Exhibit 1).

Dr. Ayyadurai: "*I build large-scale computer systems and stuff I've used has been used by the Senate, has been used by the largest fortune 1000 companies in the world.* So I know how you move from paper-based systems to electronic systems." (Exhibit 1).

146. ~~132.~~ Third, Mr. Lindell said that his statements about Smartmatic were based on evidence, investigations, and facts. Mr. Lindell intentionally created the impression that his statements about Smartmatic were predicated on reliable, verifiable facts as opposed to speculation or opinion. For example:

- a. Mr. Lindell: "[T]onight... you're going to see on this show. We have [] *cyber forensic experts, we're going to have 100%, you're going to see all this evidence that by the time you're done seeing it, you're going to go wow, 100%, it proves exactly what happened, that these machines were used to steal our election by other countries,* including China." (*Absolute Proof*, (Exhibit 1).)
- b. Mr. Lindell: "You know, what I put out in this documentary [*Absolute Proof*], Steve, is like one-one-thousandth of what we

have. *It's 100 percent proof in any court of law, you hold up, here it is.*" (*War Room* podcast, February 5, 2021 (Exhibit 9).)

- c. Mr. Lindell: "*It's the evidence, the hard evidence in this, in this documentary* [Absolute Proof] *these are the facts. There's nothing subjective*, there's no subjectivity. *It's all here's the facts*, here's what happened on the first, second, third, fourth here's what happened each day, a print of what happened. So yeah, Dominion, Smartmatic both here." (*War Room* podcast, February 5, 2021 (Exhibit 9).)
- d. Mr. Lindell: "It doesn't mean the evidence isn't evidence. *It's 100% proof. That's why it's called 'Absolute Proof.'*" (*War Room* podcast, February 6, 2021 (Exhibit 11).)
- e. Mr. Lindell: "And we've, we've just shown everybody in the world *100% evidence that this was an attack on our country and is still under attack by China and other countries through the use of these machines used in our election.*" (*Absolute Proof*, (Exhibit 1).)
- f. Mr. Lindell: "*100% we have the election fraud. Watch my [] video, watch my documentary.* And you too will go, what?" (*Real America with Dan Ball* (Exhibit 12).)
- g. Mr. Lindell: "*I have 100%, not 99%, 100% evidence that of everything that they did Smartmatic [] ES&S, all of those machines did and stole[] our country and stole[] our election.*" (*The Pete Santilli Show* (Exhibit 16).)
- h. Mr. Lindell: "They can't deny the cast vote records. . . . *this is what these machines say happened in your county. This isn't Mike Lindell, this isn't some cyberspace thing, this is what the machines are putting out, in order.*" (*Updates On the Smartmatic Lawsuit and The Cast Vote Records* (Exhibit 144).)

147. ~~133.~~ Mr. Lindell's efforts to create the impression that his statements about Smartmatic were truthful, accurate, and factual is one of the reasons that Smartmatic was damaged. Mr. Lindell's statements regarding Smartmatic were unequivocal.

### III. Mr. Lindell's False Statements and Implications About Smartmatic

148. ~~134.~~ Mr. Lindell's statements about Smartmatic were not facts. Mr. Lindell's statements about Smartmatic were lies. The demonstrably, verifiable facts are:

- Smartmatic’s election technology and software were only used in Los Angeles County, and not used by any other voting machine company, for the 2020 U.S. election.
- Smartmatic was **not** in a business relationship with Dominion or ES&S during the 2020 U.S. election. Dominion, ES&S and Smartmatic are competitors. Dominion, ES&S, and Smartmatic did not share software during the 2020 U.S. election.
- Smartmatic’s election technology, hardware, and software were **not** used to steal the 2020 U.S. election. Nor could they have been, given that Smartmatic’s role was limited to Los Angeles County.
- Smartmatic’s election technology, hardware and software were **not** compromised and hacked by China during the 2020 U.S. election. No one has identified a shred of evidence that there were cyber-security issues in Los Angeles County.
- Smartmatic was **not** engaged in a criminal enterprise to overturn the 2020 U.S. election. No one has identified a shred of evidence that Smartmatic was engaged in a criminal enterprise to overturn the election.
- Smartmatic’s election technology, hardware and software were **not** designed to rig and fix elections and have **not** been used to rig and fix elections before. Smartmatic’s election technology, hardware and software were designed for security, reliability, and auditability. No after-the-fact audit has ever found that Smartmatic’s technology, hardware or software were used to rig, fix, or steal an election.
- Smartmatic’s election technology and software were **not** connected to the Internet during the 2020 U.S. election. Smartmatic machines are “air-gapped,” self-contained, and never connected to the Internet.

149. ~~135.~~ Mr. Lindell did not let these demonstrable, verifiable facts stand in his way of telling a story that would make him money and grow his fame.

**A. Mr. Lindell falsely stated and implied that Smartmatic’s election technology and software were widely used in the 2020 U.S. election in order to attack the election.**

150. ~~136.~~ Mr. Lindell stated and implied that Smartmatic election technology, hardware, and software were widely used during the 2020 U.S. election, including in the battleground states, and in two states with particularly close outcomes: Arizona and Michigan.

Mr. Lindell could not persuade people that Smartmatic had stolen the election if Smartmatic's election technology, hardware, and software were not widely used during the 2020 U.S. election.

151. ~~137.~~ Below are some of the statements that Mr. Lindell made and/or published<sup>6</sup> to create the impression that Smartmatic technology, hardware, and software were widely used during the 2020 U.S. election:

- a. Mr. Lindell: "I mean, this is what they do. ***Dominion, Smartmatic, all of them.*** It's just like, you talk to Matt DePerno ***in Michigan***, and they've been going through this every day for months. ***And in Arizona***, you know, it's just like right now, when they find those [] all the stuff that's missing, it doesn't surprise anyone. I think everybody knows now, this is the biggest cover-up that's probably in history for a crime. ***It's so massive that they've covered this up with the machine, or all the stuff that they did with the machines.***" (*War Room* podcast, May 8, 2021 (Exhibit 30).)
- b. Mr. Lindell: "[O]ver the next five weeks, we're gonna dump all the evidence that came from these machines, Smartmatic and Dominion. ***And right now as of today, you've got Maricopa County in Arizona***, that audit, they just picked the three cyber teams and what and right away Dominion's out there bad mouthing them... ***And what you're gonna find is every state in this country that had machines – Dominion, Smartmatic, and ES&S***, they're all cousins, and they all [] have that rated waste feature. And they all were done voting flipped in this last election. We can never have machines again, in any election, here or anywhere in the world..." (*Indivisible with John Stubbins* (Exhibit 22).)
- c. Mr. Lindell: "Why didn't they just open up the machines? They did in two counties. ***They did in Antrim County, Michigan, and in a primary [] in Massachusetts. Both of those counties were opened up the machines and they found the same thing.***" (*The Pete Santilli Show* (Exhibit 16).)
- d. Mr. Lindell: "***They're all split off from Smartmatic*** that started in 2001, or 2002. ***They're, every one of them is the same, they're interchangeable. And by the way, every state in the United States was I, had votes flip. It wasn't just those swing states...*** [A]nd everyone says, well Dallas didn't have Dominion, because they didn't want it. No, they had the other one. They had SNS or whatever they had. [] [I]t didn't

<sup>6</sup> Mr. Lindell is the creator, broadcaster, publisher and republisher of the four "Absolute" documentaries and of the "Mike Lindell Cyber Symposium." As such, Mr. Lindell is responsible for not only all of the statements he made, but also all of the statements his guests made during those documentaries and at that Symposium.

matter what machines you had, there was this whole thing, the cyber-attack...” (*The Pete Santilli Show* (Exhibit 16).)

- e. Colonel Waldron: “Some of the anomalies that we noticed in the 2020 general elections that ***five key states all stopped counting at a certain time in these key battleground states. These were all where the software Dominion machines, ES&S machines were used, the the Smartmatic, the Gems software, so when the vote stopped counting...***” (Mike Lindell’s Cyber Symposium (Exhibit 34).)
- f. Mr. Lindell: “This was an attack on our country. ***These Dominion machines and Smartmatic, these machines that were [] the tools of this attack***, and we will never have another fair election if we [] don’t stop that, so I will never back down.” (*A Screening and Conversation of Absolute Proof* (Exhibit 14).)
- g. Mr. Lindell: “***Smartmatic, ES&S, don’t matter. Just in Dallas alone***, there was 57 vote, 57,000 votes flipped on, and I don’t even know if that was before noon.” (*Scientific Proof* (Exhibit 3).)

152. ~~138.~~ Individuals who heard Mr. Lindell’s statements were led to believe that Smartmatic’s election technology, hardware, and software were widely used during the 2020 U.S. election, including in states with close outcomes, to attack the election. Mr. Lindell intended for individuals who heard or read his statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

153. ~~139.~~ Mr. Lindell’s statements and implications that Smartmatic’s election technology, hardware, and software were widely used during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic’s election machines and software were only used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election.

154. ~~140.~~ Second, Smartmatic’s election technology, hardware, and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic’s election technology, hardware, and software were not used in the 2020 battleground states,

Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin. Smartmatic's election technology, hardware, and software was not used in Texas. Smartmatic's election technology, hardware, and software were not used in any counties in any of these States.

155. ~~141.~~ Third, Smartmatic's election technology, hardware, and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology, hardware, and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin (or any counties within these States). Smartmatic's election technology, hardware, and software were not used by another company in Texas or any county within Texas.

**B. Mr. Lindell falsely stated and implied that Smartmatic had a corrupt relationship with Dominion and ES&S during the 2020 U.S. election in order to attack the election.**

156. ~~142.~~ In an attempt to convince the general public that all voting technology machines are interchangeable and that they all participated in a criminal conspiracy to overturn the 2020 U.S. election, Mr. Lindell claimed and implied that Smartmatic had links to Dominion and ES&S during the 2020 U.S. election. Mr. Lindell repeatedly stated and broadcasted statements from others that Smartmatic was connected to Dominion and ES&S.

157. ~~143.~~ Below are some of the statements that Mr. Lindell made and/or broadcast to state and imply that Smartmatic had a corrupt relationship with Dominion and/or ES&S during the 2020 U.S. election:

- a. Mr. Lindell: "We're going after them in the biggest way possible, and we're not – we're *including Smartmatic because now we've tied the two together. They're the mothership*, all of that's gonna come out too, that evidence. *They're all tied together in this corruption and this – and what went on to our country, the attack on our country*, but this is why we're doing it." (*War Room* podcast, April 9, 2021 (Exhibit 26).)
- b. Mr. Lindell: "Texas still had machines, all the machines are the same. They're all – *you've got your ES&S, your Hart, your Diebold, your*



***Dominion and your mothership, Smartmatic.***” (*War Room* podcast, May 3, 2021 (Exhibit 28).)

- c. Mr. Lindell: “And what you’re gonna find is every state in this country that had machines – ***Dominion, Smartmatic, and ES&S, they’re all cousins***, and they all [] have that rated waste feature. And they all were done voting flipped in this last election. We can never have machines again, in any election, here or anywhere in the world...” (*Indivisible with John Stubbins* (Exhibit 22).)
- d. Colonel Waldron: “So a critical capability for any of this to happen are the inherent vulnerabilities that were ***built into ES&S and Dominion software, which is, you know, again, we’ve proven through, through our work that this is all related directly back to the soft, Smartmatic [] SGO Smartmatic software core.***” (*Absolute Proof* (Exhibit 1).)
- e. Mr. Lindell: “***Smartmatic, ES&S, don’t matter.*** Just in Dallas alone, there was 57 vote, 57,000 votes flipped on, and I don’t even know if that was before noon.” (*Scientific Proof* (Exhibit 3).)
- f. Mr. Lindell: “100% it can only be done by machines. I can’t stress that enough.” Douglas Frank: “Absolutely.” Mr. Lindell: “***And they all rhyme with Dominion, or Smartmatic, ES&S all of them.***” (*Scientific Proof* (Exhibit 3).)
- g. Mr. Lindell: “***This was something that came through the machines, the Dominion machines, the Smartmatic and other machines. This was a cyber attack.***” (*Absolutely 9-0* (Exhibit 7).)
- h. Mr. Lindell: “[B]ut ***it’s not just Dominion [] and not just Smartmatic, and not just the machine.*** Look at what they’re doing. ***They’re all part of this attack on our country.***” (*The Pete Santilli Show* (Exhibit 16).)
- i. Mr. Lindell: “***I have 100%, not 99%, 100% evidence that of everything that they did Smartmatic [] ES&S, all of those machines did and stole[]*** our country and stole[] our election.” (*The Pete Santilli Show* (Exhibit 16).)
- j. Mr. Lindell: “***Smartmatic started machines in Venezuela, around 2001 2002. When they [] brought them in there, they invented them and brought them in there*** and took down that country in two years. ***It was brought into the United States, they split with Dominion, ESS and Smartmatic. It’s all, all they’re built for is to steal elections.*** They’ve stolen in the United States...” (*The Pete Santilli Show* (Exhibit 16).)
- k. Mr. Lindell: “You know, what we, ***what everybody needs to know is that they’re all, they’re all cousins. They’re all split off from Smartmatic*** that



started in 2001, or 2002. They're, every one of them is the same, ***they're interchangeable.***" (*The Pete Santilli Show* (Exhibit 16).)

- l. Mr. Lindell: "Not only that, they're, you know what they did to our country ***them and Smartmatic, let's not forget Smartmatic, they're like the mothership of this.*** And for not only being involved in the biggest crime against our country, probably in history..." (*USA Watchdog* (Exhibit 24).)
- m. Mr. Lindell: "[B]ut the point of that, of bringing up the Texas thing is ***ESS, Smartmatic and Dominion, you can interchange the names, they all are the same.*** They cyber phonetics [sic] we showed goes through all these machines, ***they're all the same. This is [my] whole point...***" (*A Screening and Conversation of Absolute Proof* (Exhibit 14).)
- n. Mr. Lindell: "[A]s part of my due diligence, that's been all this week. I wanted to go back to where this all started. And Venezuela, ***it all started in Venezuela with Smartmatic, not Dominion or the other one, it was with Smartmatic.***" (*A Screening and Conversation of Absolute Proof* (Exhibit 14).)
- o. Mr. Lindell: "I've been obviously just fighting every day to get this, to the nation and everybody, the world[,] these machines where it got hacked, ***Dominion, Smartmatic, Hart all of them are the same, ES&S.*** You just say Dominion, but it's all machines." (*Newsroom with Pearson Sharp* (Exhibit 108).)
- p. Mr. Lindell: "Smartmatic . . . ***ties to Dominion like you wouldn't believe.***" (*Big News! We Have The Smartmatic Cast Vote Records From LA County and They Show Computer Manipulation* (Exhibit 143).)
- q. Mr Lindell: "We have an algorithm that came out of a Mesa County machine . . . those same algorithms of Smartmatic . . . this is Smartmatic and Dominion . . . ." (*Updates On The Smartmatic Lawsuit and The Cast Vote Records* (Exhibit 144).)
- r. ~~p.~~ Mr. Oltmann: This particular piece is actually talking about ***the... similarities in testing of the equipment, the hardware, between Smartmatic and Dominion voting systems. So they're using the same hardware, they just have a new badge on it, one says Dominion Voting and one says Smartmatic... Yes, yeah. Made by the same supplier. Right.***

\*\*\*

Mr. Oltmann: We were able to build an entire graph of the ***people that worked for ES&S, Hart, Dominion Voting Systems, Clear Ballot,***

*Smartmatic, and they basically recycle people through the company.*  
(Mike Lindell's Cyber Symposium (Exhibit 36).)

158. ~~144.~~ Individuals who heard Mr. Lindell's statements were led to believe that (1) Dominion, Smartmatic, and/or ES&S were related companies; (2) Dominion, Smartmatic, and/or ES&S used interchangeable voting technology, hardware, or software in the 2020 U.S. election; and/or (3) Dominion, Smartmatic and ES&S worked together for the 2020 U.S. election. Mr. Lindell intended for individuals who heard his statements to draw those conclusions. Those conclusions were an important component of the disinformation campaign.

159. ~~145.~~ Mr. Lindell's statements and implications that (1) Dominion, Smartmatic, and ES&S were related companies; (2) Dominion, Smartmatic, and ES&S used interchangeable voting technology hardware or software in the 2020 U.S. election; and (3) Dominion, Smartmatic, and ES&S worked together for the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic and Dominion have no corporate, business, or other relationship. Smartmatic and ES&S have no corporate, business, or other relationship. Smartmatic does not own Dominion or ES&S. Neither Dominion nor ES&S owns Smartmatic.

160. ~~146.~~ Second, Dominion, Smartmatic, and ES&S are competitors. They compete against one other. Smartmatic does not assist Dominion or ES&S with their projects. The three companies do not work together. And the three companies did not work together in connection with the 2020 U.S. election.

161. ~~147.~~ Third, Smartmatic's election technology, hardware, and software was not used by Dominion or ES&S during the 2020 U.S. election. Smartmatic did not license its technology, hardware, or software to Dominion or ES&S for use in the 2020 U.S. election. Neither Dominion nor ES&S purchased Smartmatic's election technology and software for use in the 2020 U.S. election.

162. ~~148.~~ Fourth, Smartmatic's election technology and software were only used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election. They were not used by any other voting technology company.

**C. Mr. Lindell falsely stated and implied that Smartmatic stole the 2020 U.S. election for Joe Biden and Kamala Harris.**

163. ~~149.~~ Mr. Lindell spread a story that the 2020 U.S. election was stolen from Donald Trump to garner publicity, financial support, and advertising airtime for himself personally and for his company, MyPillow. Given that objective, Mr. Lindell focused on persuading people that electronic voting machines, including Smartmatic, stole the election for Joe Biden and Kamala Harris.

164. ~~150.~~ Below are some of the statements that Lindell made and/or broadcast to create the impression that Smartmatic had stolen the 2020 U.S. election for Joe Biden and Kamala Harris:

- a. Mr. Lindell: "[B]ut *it's not just Dominion [] and not just Smartmatic and not just the machine.* Look at what they're doing. *They're all part of this attack on our country.*" (*The Pete Santilli Show* (Exhibit 16).)
- b. Mr. Lindell: "I have, I have 100%, not 99%, 100% evidence that of everything that they did *Smartmatic [] ES&S, all of those machines did and stole[] our country and stole[] our election.*" (*The Pete Santilli Show* (Exhibit 16).)
- c. Mr. Lindell: "Smartmatic started machines in Venezuela, around 2001, 2002. When they [] brought them in there, they invented them and brought them in there and took down that country in two years. It was brought into the United States, they split with Dominion, ESS and *Smartmatic. It's all, all they're built for is to steal elections. They've stolen in the United States...*" (*The Pete Santilli Show* (Exhibit 16).)
- d. Mr. Lindell: "[W]hat you're saying there, Dr. Frank, they're saying that *they've set this in the machine* –

Dr. Frank: Yes.

Mr. Lindell: Or set this beforehand - -

Dr. Frank: Yes.

Mr. Lindell: ***That they set to see who was gonna win and they set this algorithm?***

Dr. Frank: Yes.

Mr. Lindell: Okay. These are the algorithms we've been telling you about." (*Scientific Proof* (Exhibit 3).)

- e. Mr. Lindell: "***The same thing, the same machines, the same attack, the same people, the same corruption that went on, the same crime against humanity was all, crossed all the states.***" (*Scientific Proof* (Exhibit 3).)
- f. Mr. Lindell: "[T]he you know, ***the purpose of this whole show, obviously, is to show everyone in the world that these machines that this was the biggest fraud and the biggest crime I believe against humanity.*** It was a crime against humanity." (*Absolute Proof* (Exhibit 1).)
- g. Mr. Lindell: "Could you guys all hear this? This is what we're up against, this Dominion, ***these machines is the biggest fraud in election. They stole this.*** But now the truth is all going to be revealed." (*Absolute Proof* (Exhibit 1).)
- h. Mr. Lindell: "Right. So I just want everyone out there to know this before you get into town. This is just a small country, [n]orthern Michigan, and they ended up flipping, we had 15,718 votes.

Mr. DePerno: 15,718 votes.

Mr. Lindell: Votes. ***And 7,060 were flipped from Trump to Biden, is that correct?***

Mr. DePerno: And what's more even, it's even more -

Mr. Lindell: ***By machines, right? It had to be done by the machines.***

Mr. Deperno: ***Absolutely by machines.***" (*Absolute Proof* (Exhibit 1).)

- i. Mr. Lindell: "Right they were just flipped. In order for that to be off, you do the conclusion which I would right now, 100%, how could that be off? It would be something wrong with what?

Mr. DePerno: The machines.

Mr. Lindell: The machines, the machines. And what we're showing here right now, what you're going to see, all this what we've been talking

about, *this massive machine election fraud that went on, where countries hacked into our election*. And nationwide, this is one little county in northern Michigan, and *these machines would do it right down to the precinct...* And so what I want to tell you all is this is the perfect example, just so you know, right down to the precinct level, what went on with these machine[s]...” (*Absolute Proof* (Exhibit 1).)

- j. Mr. Lindell: “Right, so *both of them involved the machines, everybody*. One we’ve talked about in this show is here. But then the cyber one is what you just heard from Russell, which he said earlier, *this is all the attack by the other countries that hacked in which we’re going to show you proof now that Russell doesn’t even know that we have that’s going to show who did it, the time they did it, the computer they did it off it, everything.*” (*Absolute Proof* (Exhibit 1).)
- k. Mr. Lindell: “And it’s gonna come out. *And this is all, and that’s just another way that, to cheat with these machines.*” Michael Flynn: “Right.” Mr. Lindell: “*There’s actually four ways, maybe even more we don’t know about, but these are all the online ways...*” (*Absolute Interference* (Exhibit 5).)
- l. Mr. Lindell: “Talking about ‘Absolute Proof’ that documentary we did, where *we have the spyware and these American heroes that were [] whistleblowers and stuff that were there and that worked for the government and stuff that, former and present, that were there and they were taking these footprints, these cyber footprints the night of the election, actually, from November 1st to 5th*. And we have all the IP addresses... the ID’s of the computers, we have all this of the attacks...” Douglas Frank: “Yes. I was on the edge of my seat watching that...*But the thing about it is, you’re showing the incursions into the machines but what do they do when they’re there? They have to know what to do. That’s what the algorithm is telling them what to do.*” (*Scientific Proof* (Exhibit 3).)
- m. J. Alex Halderman: “*I know America’s voting machines are vulnerable, because my colleagues and I have hacked them repeatedly. We’ve created attacks that can spread from machine to machine like a computer virus and silently change election outcomes*. And in every single case, we’ve found ways for attackers to sabotage machines and to steal votes.” Unknown Speaker 2: “When you say hacked, what were they able to do once they gained access to the machines?” Douglas Lute: “All sorts of things, *they could manipulate the outcome of the vote, they could manipulate the tally. They could delete the tally. And they could compromise the vote in any number of ways.*” (*Absolutely 9-0* (Exhibit 7).)

- n. Mr. Lindell: ***“This was an attack on our country, these Dominion machines and Smartmatic, these machines that were [] the tools of this attack, and we will never have another fair election if we don’t [] stop that, so I will never back down.” (A Screening and Conversation of Absolute Proof (Exhibit 14).)***
- o. Mr. Lindell: “We got whistleblowers you’re gonna see. We have people that worked on the inside... maybe they’ll come clean and get lesser sentences. [] ***I spent millions of dollars investigating [] Dominion, Smartmatic... the people behind these attacks,*** investigators that went over and ***cyber people that went over, got the IPs and the IDs of people in China.***” (Eric Metaxas Radio Show (Exhibit 20).)
- p. Mr. Lindell: “Dominion, Smartmatic, Hart all of them are the same, ES&S. You just say Dominion, but it’s all machines. ***China hacked into our election and flipped millions upon millions of votes.***” (Newsroom with Pearson Sharp (Exhibit 108).)
- q. Mr. Lindell: “Well, I just met Dr. Shiva four weeks ago... And he knows all about these machines now and we’re going to hear some of the stuff that I found out [and] went wow, ***this is a, absolutely validates this election fraud with these machines...***

\*\*\*

Dr. Ayyadurai: I found out something interesting, I found out that these electronic voting machines, remember, there’s two ways you can vote. One is you vote, you give a paper ballot, and the paper ballot is counted by human beings, two people, that’s what occurred in Franklin County. But ***in those other counties, they take that paper ballot when you vote electronically –***

Mr. Lindell: ***Into a machine.***

Dr. Ayyadurai: It goes into a machine. And what happens in that machine? The paper ballot is converted to an image called a ballot image, no different than you taking a phone, a picture with your iPhone. Now so what is actually counted? The paper ballot gets put aside, the machine, the electronic quote unquote AI on the machine, actually tries to figure out where the circles are. And the machine is counting the ballot image. So at that stamp, ***at that point I realized, oh my god, the ballot image is the ballot, the images are the ballot...***

\*\*\*

Dr. Ayyadurai: The other piece of the puzzle was, I found out that ***the voting machines, as early as 2002, have a feature in there called a weighted race feature, where it’s embedded into the system where you***

*can multiply candidates votes by a percentage.* All right, so what that means is you get 1,000 votes, I get 1,000 votes, I can multiply your votes by two, my votes by point five. And if everyone, anyone doesn't believe this, go look up the deebot [sic] voting manual, go to page two dash 126 in the manual in the 2002 version, and you'll see it in there.

Mr. Lindell: *So did, were you able to prove that yours, that your [election] was stole by the machines? Did you mathematically [] prove, did you prove 100% that this could only be recreated by a machine to do that, 60/40, that's it?*

Dr. Ayyadurai: *Yeah.* So what we proved, Mike, was, first of all, we showed that the state had deleted the ballots images, which means that if they had the ballot image they could have found the algorithm.

\*\*\*

Mr. Lindell: *This was a historical election fraud. This was coming from a lecture [sic] from machines, from these machines, of biblical proportions, of historical proportions. And now this is, it's all going to get exposed. (Absolute Proof (Exhibit 1).)*

r. [Mr. Lindell: Let me tell you about Smartmatic . . . in the 2020 election, do you think L.A. County was computer-manipulated or not? . . . Of course it was! And now we have the proof.” Updates On The Smartmatic Lawsuit and The Cast Vote Records \(Exhibit 144.\)](#)

165. ~~151.~~ Individuals who heard Mr. Lindell's statements were led to believe that Smartmatic's election technology, hardware, and software were used to steal the 2020 U.S. election in favor of Joe Biden and Kamala Harris and that Smartmatic acted to help steal the 2020 U.S. election. Mr. Lindell intended for individuals who heard or read his statements to draw these conclusions. This was a key component of Defendants' disinformation campaign.

166. ~~152.~~ Mr. Lindell's statements and implication that Smartmatic and its election technology, hardware, and software were used to steal the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology, hardware, and software were not used to steal the 2020 U.S. election for Joe Biden and Kamala Harris. They were not used to fix the election. They were not used to rig the election. They were not used to steal the



election. And Smartmatic did not take any actions to steal or rig the election for Joe Biden and Kamala Harris.

167. ~~153.~~ Second, Smartmatic's election technology and software were used only in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election. Smartmatic's election technology and software could not have been used to steal the election because they were not used anywhere during the election outside Los Angeles County.

168. ~~154.~~ Third, Smartmatic's election technology, hardware, and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic's election technology, hardware, and software were not used in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin. Smartmatic's election technology, hardware and software were not used in any counties in these states. Smartmatic's election technology, hardware and software were not used in Texas. Smartmatic's election technology, hardware and software could not have been used to steal the election in these states (or counties) because they were not used in those states and counties.

169. ~~155.~~ Fourth, Smartmatic's election technology, hardware, and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology, hardware, and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, Wisconsin, or Texas (or any counties within these states). Smartmatic's election technology, hardware, and software could not have been used by another company to steal the 2020 U.S. election because no other company used Smartmatic's election technology, hardware, and software.



170. ~~156.~~ Fifth, Smartmatic did not work with or assist any other voting technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting technology company, including Dominion and ES&S. Smartmatic's election technology, hardware, and software could not have been used to manipulate the vote in favor of one candidate over another because its election technology, hardware, and software were not used outside Los Angeles County.

**D. Mr. Lindell falsely stated and implied that Smartmatic's election technology, hardware, and software were compromised or hacked by China or other foreign countries during the 2020 U.S. election.**

171. ~~157.~~ Mr. Lindell claimed that Smartmatic was a voluntary and willful participant in a scheme to steal the 2020 U.S. election. Mr. Lindell also claimed that Smartmatic's election technology, hardware, and software were compromised or hacked by China or other foreign countries during the 2020 U.S. election. Specifically, Mr. Lindell told people that Smartmatic machines allowed China or other foreign countries to infiltrate the voting machine technology and alter the results in favor of Joe Biden and Kamala Harris.

172. ~~158.~~ Below are some of the statements that Mr. Lindell made and/or published to create the misimpression that Smartmatic's election technology, hardware, and software were compromised by China and other countries or hacked during the 2020 U.S. election:

- a. Mr. Lindell: "***This was a cyber attack on our country.*** Donald Trump really won 80 million to 66 million. All the evidence is there, I've already got all the evidence... But now we have validated every IP, ***every ID address of all the companies here and over in China, and other countries.***... even if you're a Democrat or Republican, you're gonna know this was an attack on our country." (*Indivisible with John Stubbins* (Exhibit 22).)
- b. Mr. Lindell: "***This was a crime, an attack by China and other countries, attack on our election*** and which we approved. ***60 some percent came right out of China,*** we have the IP addresses the IDs of computers,

everything. We even have their passwords for crying out loud, we have everything.” (*Indivisible with John Stubbins* (Exhibit 22).)

- c. Mr. Lindell: “We have them from November 1 all the way through the election, and ***shows them a massive attack on our country by China*** and other country. ***China did 60% of this. It was all done through Dominion machines and [] Smartmatic machines.***” (*Real America with Dan Ball* (Exhibit 12).)
- d. Mr. Lindell: “But the people that attacked this country, if you watch my Absolute Proof, ***that we were hacked by foreign actors and [] domestic actors. [] [A]nd China by the way was 62% of the attack...*** If these machines are not gone, if they’re not gone, the world is done.” (*The Pete Santilli Show* (Exhibit 16).)
- e. Mr. Lindell: “***[T]his was the machine fraud. This was a cyber attack from another country.*** I look at this, I go, is this real. Then I dug into that. And from November 9th on I went, did a deep dive. And now all that evidence is out there.” (*The Pete Santilli Show* (Exhibit 16).)
- f. Mr. Lindell: “***[F]oreign countries, like China, came in and attacked our country using these machines; Dominion, Smartmatic, ES&S all these machines.***” (*War Room* podcast, March 26, 2021 (Exhibit 18).)
- g. Ms. Fanning: “Now, red has been the most severe attacks, ***those lines are all coming out of China. Those are the most severe attacks on our election system.*** Now, this is, this exact information, the exact same type of information I should say, was presented to FBI Director, former FBI Director James Comey, by a whistleblower in 2015. ***They knew, in fact that our election machines were open for hacking,*** it’s important to understand that there are prismatic scoring algorithms that they knew about that entered the election, and ***they steal the vote at the transfer points.*** So at the point where the election, the vote is leaving the Secretary of State’s office and these machines, that is the point at which the vote is stolen at the transfer points...” (*Absolute Proof* (Exhibit 1).)
- h. Mr. Lindell: “***100% it can only be done by machines.*** I can’t stress that enough.” Douglas Frank: “Absolutely.” Mr. Lindell: “***And they all rhyme with Dominion, or Smartmatic ES&S, all of them...*** [W]e have enough evidence that we’re gonna dump for the next six weeks on the whole world and the country that by the time it gets to Supreme Court, everyone’s gonna, they’re all nine going to go 9-0 yes, so our country’s been attacked. ***We have been attacked by foreign actors, starting with China,*** and with help of domestic actors here that you know, they had to be let in...” (*Scientific Proof* (Exhibit 3).)
- i. Mr. Lindell: “So everybody knows what you’re going to see, when you see this spike, you’re going to see a forensic footprint, how this happened and

*who did it. China? Yes. If you're on the Internet, the bottom line is you can get, you can cheat, you can do all kinds of things.* And that's because otherwise you can't explain any of these numbers. Right?" Matt DePerno: "That's correct. The machine results don't match up with the hand-tabulation." (*Absolute Proof* (Exhibit 1).)

- j. Mr. Lindell: "*[T]his was 100% an attack by China on our country through these machines.*" (*Absolutely 9-0* (Exhibit 7).)
- k. Mr. Lindell: "But I wanted to get on here and explain to everyone, *this was an attack by China, on our country through these Dominion and these other machines*, where, and they just hacked in, *a cyber attack hacked into our election* and flipped it to everyone, anyone that they wanted to win." (*Absolutely 9-0* (Exhibit 7).)
- l. Mr. Lindell: "This is why, when we say that Donald Trump really won this election by like almost 80 million to 68 million for Biden, how can you switch tens of millions of votes? *It had to be done with computers, it had to be done with the machines, through these Dominion and through all these machines, and China, China did it.* It's a cyber attack of historical proportions." (*Absolutely 9-0* (Exhibit 7).)
- m. Mr. Flynn: "*China is clearly, I mean everything that we've learned about the ownership of some of these machines, some of these companies to, to how they're actually operating inside of this country...* Now you take it to the elections [] and you look at the machinery that we are using in our election process, which, you know, I don't know how we are going to go forward as a nation and continue to use these machines knowing that what we just went through was really a false election. It was a false election." (*Absolute Interference* (Exhibit 5).)
- n. Mr. Lindell: "Dominion, Smartmatic, Hart all of them are the same, ES&S. You just say Dominion, but it's all machines. *China hacked into our election and flipped millions upon millions of votes.*" (*Newsroom with Pearson Sharp* (Exhibit 108).)

173. ~~159.~~ Individuals who heard Mr. Lindell's statements were led to believe that Smartmatic's election technology, hardware, and software were compromised or hacked during the 2020 U.S. election by China or other foreign countries. Mr. Lindell intended for individuals who heard or read his statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

174. ~~160.~~ Mr. Lindell's statements and implication that Smartmatic's election technology, hardware, and software were compromised or hacked by China or other foreign countries during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology, hardware, and software were not compromised or hacked during the 2020 U.S. election. There is no evidence of cyber-security problems in connection with the election in Los Angeles County, the only county where Smartmatic's election technology and software were used during the 2020 U.S. election.

175. ~~161.~~ Second, Smartmatic's election technology, hardware, and software does not allow votes to be changed, manipulated, or altered at all. This is true of the election technology and software that Smartmatic used during the 2020 U.S. election in Los Angeles County. It is also true of the election technology, hardware, and software that Smartmatic has developed over the years.

176. ~~162.~~ Third, Smartmatic did not work with or do anything whatsoever to assist China or any other foreign countries for the 2020 U.S. election.

177. ~~163.~~ Fourth, no other foreign countries—including China—compromised or hacked the 2020 U.S. election.

**E. Mr. Lindell falsely claimed that Smartmatic machines were connected to the Internet during the 2020 U.S. election in order to attack the election.**

178. ~~164.~~ Mr. Lindell furthered his false theory that Smartmatic's election technology, hardware, and software were compromised or hacked by China or foreign countries by arguing a false premise: that Smartmatic's machines were connected to the Internet during the 2020 U.S. election.

179. ~~165.~~ Below are some of the statements that Mr. Lindell made to create the false impression that Smartmatic's election machines were connected to the Internet during the 2020 U.S. election:

- a. Mr. Lindell: "***I am going after Dominion and Smartmatic***, I'm going after them with a lawsuit if this doesn't all come out to the public and they all get exposed and then [] show what happened in our election... ***they're going to be crimes against our country that they used their [] their machines were all online.***" (*War Room* podcast, February 6, 2021 (Exhibit 11).)
- b. Mr. Lindell: "We've got [voting machine companies] saying that they don't go online and they, it's right in their manual that they go online. ***We've got proof that they were online. We've got all the evidence.***" (*War Room* podcast, February 6, 2021 (Exhibit 11).)
- c. Mr. Lindell: "I want everybody to know that. But you're gonna see [it] is impossible to be done by humans, it had to be done by machines, ***i.e. computers, and they had to be online?***" Douglas Frank: "***Absolutely, the whole time.*** You have to beforehand, during, and after." (*Scientific Proof* (Exhibit 3).)
- d. Mr. Lindell: "***It had to be machines.***" Douglas Frank: "Yes." Mr. Lindell: "***And they had to be online.***" Douglas Frank: "***Constantly online.***" Mr. Lindell: "***Constantly online, everybody.***" (*Scientific Proof* (Exhibit 3).)
- e. Mr. Lindell: "Okay, I want to ask you there when you say horrify, can you explain to everybody watching this right now, what, ***what horrified you, was that the fact they could go online?***" Russell Ramsland: "***Well, there's no effective security at all for your votes.*** Your votes are stored overseas..." (*Absolute Proof* (Exhibit 1).)
- f. Mr. Lindell: "Doesn't matter. Right. Somebody else picks our people for him so why vote, right? I mean, that's the way [] it would have been. ***Machines that go online, like, and it's not, now you said earlier, it's not just Dominion, it's all the, all the machines that were used in this election.*** What, is that what you would say?" Russell Ramsland: "***Yes, that's absolutely a fair statement.*** And look, let me [] tell you a little bit about that. You know, ***for these people that say it's not online, we have videos of workers with pollbooks, who are swiping left on their pollbook and bringing up Netflix and getting a movie and watching it on their pollbook. How does that happen if it's not connected to the Internet?***" (*Absolute Proof* (Exhibit 1).)
- g. Mr. Lindell: "***I know they were all online, but they, is it illegal for them to be online?***" Russell Ramsland: "Well, it depends, some places yes,

some places no. I mean, *the assurance is that you can trust the voting system because they're not online, but they are most clearly online.*" (*Absolute Proof* (Exhibit 1).)

- h. Mr. Colbeck: "[T]hey've already admitted to the fact that that control center had computers that were connected to the Internet. And we saw the actual cable routed from the wall of the, of the TCF center to the control center. And we have election officials that admitted there were computers, in the control center that were connected to the Internet, and anybody [] worth their salt in IT land understands that if one computer is connected to the Internet, they're all connected to the Internet. You may say that it's air-gapped, you may say you have a firewall. These are people that eat firewalls for breakfast." Mr. Lindell: "*So what you're saying, you knowing that, so if it's connected to the Internet, somebody out there could have hacked in and did the flipping of the votes.*" Patrick Colbeck: "Yep... So you may be thinking you're passing that information from point A to point B. But *there's nothing to prevent it from going to point C and the Internet, it's called a man in the middle attack.*" Mr. Lindell: "Right. *So that, so if you're on, if you're online, I mean that anybody could get in there and do that because they're intercepting that, it's interception. That's why you don't have, machines aren't supposed to be online in election, right?*" (*Absolute Proof* (Exhibit 1).)
- i. Mr. Flynn: "And these machines, what we do know, one of the things that *we do know for certain is that the machines are connected to the Internet.* And most people, most people in this country, when you go in to vote... none of those machines are supposed to be connected to the Internet, none of them... *because they're connected to the Internet, we have all these paths, these electronic pathways, or these electronic roads that lead from that machine where that individual voted...* and it goes back in through these IP addresses." (*Absolute Interference* (Exhibit 5).)

180. ~~166.~~ Individuals who heard Mr. Lindell's statements were led to believe that Smartmatic machines were connected to the Internet during the 2020 U.S. election. Mr. Lindell intended for individuals who heard or read his statements to draw that conclusion. That conclusion was a key component of Defendants' disinformation campaign.

181. ~~167.~~ Mr. Lindell's statements and implications that Smartmatic machines were connected to the Internet during the 2020 U.S. election are demonstrably false and factually

inaccurate. First, Smartmatic's election technology and software for the 2020 U.S. election were not connected to the Internet or put online.

182. ~~168.~~ Second, votes cast using Smartmatic's election technology and software during the 2020 U.S. election were hand delivered after paper ballots were printed from Smartmatic's machines.

**F. Mr. Lindell falsely stated and implied that Smartmatic was engaged in a widespread criminal conspiracy to steal the 2020 U.S. election.**

183. ~~169.~~ Mr. Lindell claimed that Smartmatic was engaged in a widespread criminal conspiracy with other voting technology companies and with foreign countries to steal the 2020 U.S. election. Mr. Lindell also claimed that Smartmatic was engaged in a criminal conspiracy that created and covered up election fraud.

184. ~~170.~~ Below are some of the statements that Mr. Lindell made and published to create the false narrative that Smartmatic was engaged in a widespread criminal conspiracy:

- a. Mr. Lindell: "I mean, this is what they do. Dominion, Smartmatic, all of them. It's just like, you talk to Matt DePerno in Michigan, and they've been going through this every day for months... *I think everybody knows now, this is the biggest cover-up that's probably in history for a crime. It's so massive they've covered this up with the machine, or all the stuff that they did with the machines.*" (War Room podcast, May 8, 2021 (Exhibit 30).)
- b. Mr. Lindell: "Just like going back to Venezuela. *They took Venezuela in two years with Smartmatic. And, and it's this is their big plan. This is a very conceived plan.* And it's very organized, and very, you know, and they have all the marketing because they have all the evil media behind this." (Indivisible with John Stubbins (Exhibit 22).)
- c. Mr. Lindell: "And you know, when you get a track record going all the way back to Venezuela where *Smartmatic started in 2004, and you have all this track record* and no – and every time it comes up, how bad it is or *how corrupt it is or how [] they're rigged* and get bought you know all this [] *criminal activity*, it just gets suppressed, and *we've got to get it out now.*" (Indivisible with John Stubbins (Exhibit 22).)



- d. Mr. Lindell: “Smartmatic started machines in Venezuela, around 2001, 2002. When they [] *brought them in there, they invented them and brought them in there and took down that country in two years.* It was brought into the United States, they split with Dominion, ESS and Smartmatic. It’s all, *all they’re built for is to steal elections. They’ve stolen in the United States...*” (*The Pete Santilli Show* (Exhibit 16).)
- e. Mr. Lindell: “Not only that, they’re, you know what they did to our country them and Smartmatic, let’s not forget Smartmatic, they’re like the mothership of this. *And for not only being involved in the biggest crime against our country, probably in history...*” (*USA Watchdog* (Exhibit 24).)
- f. Mr. Lindell: “*Let’s, let’s open up the machines.* Let’s look at this and here’s what you’re gonna find, *this was the biggest crime against United States and the world in history.* I believe it’s one of the biggest ever because it affects every single person on the planet.” (*Scientific Proof* (Exhibit 3).)

185. ~~171.~~ Individuals who heard Mr. Lindell’s statements were led to believe that Smartmatic was engaged in a widespread criminal conspiracy to rig the 2020 U.S. election. Mr. Lindell intended for individuals who heard his statements to draw that conclusion. That conclusion was a key component of Defendants’ disinformation campaign.

186. ~~172.~~ Mr. Lindell’s statements and implication that Smartmatic was engaged in a widespread criminal conspiracy are demonstrably false and factually inaccurate. First, Smartmatic does not have any plans, schemes, or “deals” with anyone—government or business—to rig or steal elections, including the 2020 U.S. election.

187. ~~173.~~ Second, Smartmatic does not have any undercover dealings with Dominion, ES&S, or any other voting technology company, especially with respect to the 2020 U.S. election.

188. ~~174.~~ Third, Smartmatic uses its technology to deliver reliable, accurate, and auditable election results. Smartmatic did not and has not engaged in a criminal conspiracy to alter election results, or otherwise fix or rig any election, especially the 2020 U.S. election.



**G. Mr. Lindell falsely stated and implied that Smartmatic's election technology, hardware, and software were designed to steal elections and have stolen elections before.**

189. ~~175.~~ Mr. Lindell was not content portraying Smartmatic as having stolen the 2020 U.S. election. Mr. Lindell claimed that Smartmatic and its products served only one function: stealing elections. Mr. Lindell added credibility to his story about Smartmatic stealing the 2020 U.S. election for Joe Biden and Kamala Harris by telling people that the sole purpose of Smartmatic and its products is to steal elections.

190. ~~176.~~ Below are some of the statements that Mr. Lindell made to create the impression that Smartmatic's election technology, hardware, and software were designed to steal elections:

- a. Mr. Lindell: "Just like going back to Venezuela. ***They took Venezuela in two years with Smartmatic. And, and it's this is their big plan. This is a very conceived plan.*** And it's very organized, and very, you know, and they have all the marketing because they have all the evil media behind this." (*Indivisible with John Stubbins* (Exhibit 22).)
- b. Mr. Lindell: "***Smartmatic started machines in Venezuela***, around 2001, 2002. When they [] brought them in there, they invented them and brought them in there and took down that country in two years. It was brought into the United States, they split with Dominion, ESS and Smartmatic. ***It's all, all they're built for is to steal elections. They've stolen in the United States...***" (*The Pete Santilli Show* (Exhibit 16).)
- c. Mr. Lindell: "Venezuela is where the machine started. ***Smartmatic started in Venezuela.*** I got a whole big I've spent millions of dollars investigating this. ***They're built to take they're built as a tool to take countries.***" (Mike Lindell's Cyber Symposium (Exhibit 32).)
- d. Mr. Lindell: "Absolutely. And it's, you know, in Venezuela, when we went back, ***when it started in Venezuela, didn't they flip that country in two years, right?***" Michael Flynn: "Right so that [] what I learned, almost right after the election, when we started to really go, okay, wait a second, what happened and we started to talk about how the machines really were impacting... really from the fourth through the seventh of November. We this, this issue of Venezuela came up and ***we had the opportunity to [] get some feedback from one of the individuals who was in Venezuela at the time, who was working with [] the Chavez government.*** And it actually

caused, *they were able to take the, these machines that they had in Venezuela at the time to basically ensure that Chavez won the election and then subsequently down the road Maduro. So [] it was almost like the machinery was being tested, if you will, in another country to kind of get a sense of can you actually do this and to work for them.*" (*Absolute Interference* (Exhibit 5).)

191. ~~177.~~ Individuals who heard Mr. Lindell's statements were led to believe that Smartmatic's election technology, hardware, and software were designed to steal elections. Mr. Lindell intended for individuals who heard or read his statements to draw that conclusion. That conclusion was an important component of Defendants' disinformation campaign.

192. ~~178.~~ Mr. Lindell's statements and implications that Smartmatic's election technology, hardware, and software were designed to steal elections are demonstrably false and factually inaccurate. First, Smartmatic's election technology, hardware, and software were not designed to steal elections. Smartmatic's election technology, hardware, and software were designed to ensure secure, reliable, and auditable elections.

193. ~~179.~~ Second, Smartmatic's election technology, hardware, and software have not been used to steal elections. Smartmatic's election technology, hardware, and software have been used in thousands of elections over the last twenty years. Smartmatic's election technology, hardware, and software have not been used to steal any of those elections.

194. ~~180.~~ Third, Smartmatic's election technology, hardware, and software did not steal elections in Venezuela. Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology, hardware, and software in Venezuela after the Venezuelan government announced results that differed from the actual results. Smartmatic publicly denounced the Venezuelan government in 2017.

#### **IV. Mr. Lindell Acted with Actual Malice and Ill Will Towards Smartmatic<sup>7</sup>**

<sup>7</sup> Smartmatic's discussion of Mr. Lindell's actual malice is not an admission that Smartmatic must allege and prove Mr. Lindell and MyPillow acted with actual malice to establish liability. As noted above, at all

195. ~~181.~~ Mr. Lindell knew that the statements and implications that he and his guest speakers made about Smartmatic were false and/or he acted with reckless disregard for whether the statements and implications were true. Mr. Lindell did not care about making truthful statements about Smartmatic. Mr. Lindell was motivated to tell a preconceived story about how Smartmatic stole the 2020 U.S. election for Joe Biden and Kamala Harris.

196. ~~182.~~ Mr. Lindell's actual malice with respect to his statements and implications about Smartmatic is illustrated by the following facts:

- Mr. Lindell had no basis for his statements about Smartmatic's role in the 2020 U.S. election.
- Mr. Lindell had obvious reasons to doubt what he was saying about Smartmatic outside of the 2020 U.S. election because it had been publicly debunked for months prior to his statements.
- Mr. Lindell had obvious reasons to doubt the veracity of the guest speaker "experts" he relied on and had obvious reasons to doubt the accuracy of the "evidence" they purported to provide.
- Mr. Lindell possessed and had access to a significant volume of information that contradicted the story he told about Smartmatic. Mr. Lindell reviewed this information (and therefore knew his statements and implications were false) and/or purposefully avoided reviewing this information because he did not want to know the truth.
- A minimal amount of investigation would easily establish the falsity of Mr. Lindell's statements about Smartmatic's role in the U.S. election. Mr. Lindell has stated that he spent millions of dollars investigating Smartmatic. He would have needed to spend only a fraction of that amount to learn of Smartmatic's limited, secure role as a voting technology and services provider in Los Angeles County.

---

and prove Mr. Lindell and MyPillow acted with actual malice to establish liability. As noted above, at all times during the disinformation campaign, Mr. Lindell was acting in his capacity as the CEO and agent of his company MyPillow. Mr. Lindell's actions—including with regards to actual malice—are therefore imputed to MyPillow.

197. ~~183.~~ Mr. Lindell also acted with ill will towards Smartmatic and with a deliberate disregard for the rights and safety of Smartmatic and its officers and employees. Mr. Lindell could not further his story of election fraud without blaming Smartmatic. Mr. Lindell knew the damage it would cause the company. Mr. Lindell did not mind destroying a company because it served his personal and financial interests. For Mr. Lindell, this was not about changing the outcome of an election, this was about currying favor with President Trump, continuing to endear himself to the millions of Americans who supported President Trump, and making money.

**A. Mr. Lindell had no basis for his statements and implications regarding Smartmatic.**

198. ~~184.~~ Mr. Lindell perpetuated a story about Smartmatic and its election technology and software. He perpetuated a story to fit a preconceived narrative—that the 2020 U.S. election had been stolen by the election voting technology companies, including Smartmatic. Lindell did not have a basis for blaming Smartmatic.

**1. Mr. Lindell did not have sources to prove something that did not happen.**

199. ~~185.~~ There is one irrefutable fact that undermines nearly everything that Mr. Lindell said about Smartmatic during his disinformation campaign: Smartmatic's only role in the 2020 U.S. election was as a provider of election technology, support, and services to Los Angeles County. This fact was known to Mr. Lindell or readily ascertainable, and it puts the lie to nearly everything he said.

200. ~~186.~~ Mr. Lindell stated and implied that Smartmatic's election technology, hardware, and software were widely used in the 2020 U.S. election, including in states with close outcomes, in order to attack the election. Mr. Lindell did not have any reliable source for this

statement and implication because Smartmatic's election technology and software were only used in Los Angeles County.

201. ~~187.~~ Mr. Lindell stated and implied that Dominion and ES&S had a corrupt relationship with Smartmatic during the 2020 U.S. election in order to attack the election. Mr. Lindell did not have any reliable source for this statement and implication because neither Dominion nor ES&S had a business relationship with Smartmatic during the 2020 U.S. election.

202. ~~188.~~ Mr. Lindell stated and implied that Smartmatic stole the 2020 U.S. election for Joe Biden and Kamala Harris. Mr. Lindell did not have any reliable source for this statement and implication because Smartmatic's election technology, hardware, and software were not used in any of the states with close outcomes.

203. ~~189.~~ Mr. Lindell stated and implied that Smartmatic's election technology, hardware, and software were compromised or hacked by China or other foreign countries during the 2020 U.S. election. Mr. Lindell did not have any reliable source for this statement and implication because no one raised legitimate cyber-security concerns with the election in Los Angeles County.

204. ~~190.~~ Mr. Lindell stated and implied that Smartmatic election technology was connected to the Internet during the 2020 U.S. election in order to attack the election. Mr. Lindell did not have any reliable source for this statement and implication because there is no evidence that Smartmatic election technology was connected to the Internet during the 2020 U.S. election.

205. ~~191.~~ Mr. Lindell stated and implied that Smartmatic was involved in a widespread criminal conspiracy to alter the results of the 2020 U.S. election. Mr. Lindell did not have any reliable source for this statement and implication because there is no evidence that Smartmatic was involved in a widespread criminal conspiracy to alter the results of the 2020 U.S. election.

206. ~~192.~~ Mr. Lindell's disinformation campaign was not limited to distorting Smartmatic's role in the 2020 U.S. election. Mr. Lindell also defamed and disparaged Smartmatic by lying about the company's past. Mr. Lindell had no basis, or no credible basis, for these statements and implications either.

207. ~~193.~~ Mr. Lindell stated and implied that Smartmatic's election technology and software were designed to steal elections. Mr. Lindell did not have any reliable source with firsthand knowledge supporting this statement and implication because it never happened.

**B. There was publicly available information that contradicted the claims Mr. Lindell and his guests were making.**

208. ~~194.~~ Mr. Lindell knew his and his guests' statements and implications regarding Smartmatic and its technology and software were false. Mr. Lindell possessed and had access to information that showed his statements and his guests' statements were false. Mr. Lindell also made statements for which he had no logical or factual basis.

**1. Mr. Lindell knew Smartmatic's election technology, hardware, and software were not widely used in the 2020 U.S. election (and were not used in contested states).**

209. ~~195.~~ A myriad of information was available to Mr. Lindell that showed his statements and implications about Smartmatic and the use of its technology, hardware, and software for the 2020 U.S. election (and in contested states) were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published his false statements knowing they were false based on this information.

210. ~~196.~~ First, before the disinformation campaign, there was publicly available and easily accessible information showing which company's election technology, hardware, and software were selected for and used in each state in the country (and by county), including in contested states such as Georgia, Michigan, Pennsylvania, Arizona, Wisconsin, and Nevada.

211. ~~197.~~ Each state publicly disclosed the election technology used in the 2020 U.S. election. This information showed that Smartmatic did not provide or manufacture any technology or software in any contested states discussed by Mr. Lindell and his guests.

212. ~~198.~~ Nevertheless, in his documentary “Absolute Proof,” (published in February 2020) Mr. Lindell asserted, “I just want everyone to know that why we’re showing other states and not just the swing state[s]. It was every state, it happened in your state... Texas, when they said, oh, we didn’t use the Dominion machines. Doesn’t matter, the name of the, the name of the machine doesn’t matter... Smartmatic, ES&S, don’t matter...”

213. ~~199.~~ Take another example. During “Mike Lindell’s Cyber Symposium” in August 2021, Phil Waldron was broadcast in a pre-recorded video that was played at the Cyber Symposium multiple times over a two-day span. Mr. Waldron said, “[s]ome of the anomalies that we noticed in the 2020 general elections that five key states all stopped counting at a certain time in these key battleground states. These were all where the software Dominion machines, ES&S machines were used, the the Smartmatic, the Gems software, so when the vote stopped counting...”

214. ~~200.~~ The “key battleground states” in the 2020 election were Georgia, Michigan, Pennsylvania, Arizona, and Wisconsin. (11/30/20 Business Insider, *All major battleground states in the 2020 election officially certify their results, cementing Biden’s victory in the presidential race* (Exhibit 127).)

215. ~~201.~~ Again, there was publicly available information from all of these states at the time that showed Smartmatic was not used in their 2020 elections. The role of Smartmatic in the contested states was easy to determine and contradicted the entire narrative about Smartmatic being a player in any way in the U.S. election controversy. For example:



216. ~~202.~~ Georgia: In 2019, Georgia's RFP process demonstrated that Smartmatic was not chosen for the 2020 U.S. election. In response to the RFP, three separate companies submitted a bid. Those companies were: (1) ES&S, (2) Smartmatic, and (3) Dominion. Georgia chose two companies to advance in the process and to undergo further consideration: ES&S and Dominion. Smartmatic was not chosen. After further process with ES&S and Dominion, Dominion got the contract with Georgia. (11/30/20 *Georgia Press Conference on 2020 Election Recount Update Transcript* (Exhibit 45).) The State of Georgia also publicly disclosed that it was using Dominion's election technology for the 2020 U.S. election—not Smartmatic. (Georgia Secretary of State Press Release, Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System (Exhibit 46); 8/9/19 Georgia Secretary of State, *Dominion Voting System Certification* (Exhibit 42).)

217. ~~203.~~ Michigan: On January 24, 2017, Michigan's State Administrative Board approved only three vendors of voting systems: Dominion, ES&S, and Hart InterCivic. (Michigan Secretary of State, *Voting System Purchase* (Exhibit 49).) In early November, the State of Michigan publicly identified the use of the Dominion election management system and voting machines. There was no mention of Smartmatic. (11/6/20 Michigan Department of State Press Release (Exhibit 50).) The Secretary of State for Michigan also had a voting system map on its website that identified the vendor/manufacture for different locations. The map identified three companies: (1) Dominion, (2) Hart InterCivic, and (3) ES&S. Smartmatic was not identified. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 48).)

218. ~~204.~~ Pennsylvania: The state of Pennsylvania publicly identified the election technology and software certified for use on its website. ES&S and Dominion were identified for

use by Pennsylvania. Smartmatic was not identified. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 52).) Pennsylvania was explicit in the voting systems available for use in the 2020 general election. On April 4, 2018, Acting Secretary of State Robert Torres required each of Pennsylvania's 67 counties to select new voting systems by no later than December 31, 2019, and to implement them no later than the June 2, 2020, primary election. (Pennsylvania Pressroom, *Department of States Tells Counties To Have New Voting Systems In Place By End Of 2019* (Exhibit 53).) The Pennsylvania Department of State subsequently certified the following providers of electronic voting systems: (1) Unisyn, (2) ES&S, (3) Dominion, (4) ClearBallot, and (5) Hart Verity Voting. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 52).) Counties then had the option to choose only from seven electronic voting systems offered by those five providers. Smartmatic was not one of them. (*Votes PA: New Voting Systems* (Exhibit 54).)

219. ~~205.~~ Arizona: The state of Arizona publicly identified the election technology and software used for the 2020 U.S. election by manufacture on its website. Smartmatic was not one of them. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 57).)

220. ~~206.~~ Wisconsin: In February 2020, the state of Wisconsin published a list of the voting equipment used by each municipality within the State. Smartmatic appears nowhere on that list. (Wisconsin Election Commission, *Voting Equipment List by Municipality February 2020* (Exhibit 41).) In addition, the Wisconsin election commission publicly identified the approved voting equipment manufacturers on its website. Smartmatic was not identified. (Wisconsin Election Commission, *Voting Equipment* (Exhibit 60).)

221. ~~207.~~ Nevada: As of November 2020, all jurisdictions in Nevada used voting systems from either Dominion or ES&S. Smartmatic was not used. (Nevada Secretary of State: *Voting System* (Exhibit 62).)

1. Texas: The state of Texas publicly identified the election technology and software certified for use on the website of the Secretary of State, VoteTexas.gov. The website identifies Dominion, ES&S, and Hart InterCivic as certified for use in Texas's elections. (VoteTexas.gov, *How to Vote* (Exhibit 116).) Smartmatic was not identified. Furthermore, the Texas Secretary of State's website makes clear that it was Dominion—not Smartmatic—that had previously had issues with the State of Texas, but regardless, any issues had been resolved by the State of Texas since it selected and certified Dominion as one of its voting systems. (Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 117).)

2. Second, before Mr. Lindell's disinformation campaign, it was widely known that ES&S, was the nation's largest manufacturer of voting technology. It was also widely known that three main election technology companies dominated the U.S. market for elections: (1) ES&S, (2) Dominion, and (3) Hart InterCivic. This list did not include Smartmatic. For example:

- a. On October 29, 2018, it was reported that a trio of companies—ES&S, Dominion, and Hart InterCivic—sell and service more than 90 percent of the machinery on which votes in the country are cast and results tabulated. (10/29/18 Associated Press, *US election integrity depends on security-challenged firms* (Exhibit 86); 10/29/18 Associated Press, *Security-challenged firms are gatekeepers of US elections* (Exhibit 87).)
- b. On March 27, 2019, Senator Amy Klobuchar and others sent a letter to the country's three largest election system vendors with questions on their

security in anticipation of the 2020 U.S. election. Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (3/27/19 Klobuchar Press Release, *Ranking Members Klobuchar, Warner, Reed, and Peters Press Election Equipment Manufacturers on Security* (Exhibit 88).)

- c. On December 6, 2019, Senators Elizabeth Warren, Amy Klobuchar, and others sent letters to the private equity firms that owned or had investments in the vendors responsible for the “vast majority of voting machines and software in the United States” with questions in anticipation of the 2020 U.S. election, noting that these vendors collectively distribute voting machines and software for “over 90% of all eligible voters in the United States.” Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (12/10/19 Warren Press Release, *Warren, Klobuchar, Wyden, and Pocan Investigate Vulnerabilities and Shortcomings of Election Technology Industry with Ties to Private Equity* (Exhibit 92).)
- d. On October 28, 2019, it was reported that half the country votes on machines made by ES&S. (10/28/19 ProPublica, *The Market for Voting Machines is Broken. This Company Has Thrived in It* (Exhibit 90).)
- e. On May 2, 2019, it was reported that three companies dominate the market for voting machines in the country, with ES&S being the largest, followed by Dominion and Hart InterCivic. (5/2/19 National Public Radio, *Trips to*

*Vegas and Chocolate-Covered Pretzels: Election Vendors Come Under Scrutiny* (Exhibit 89).)

- f. On March 3, 2020, it was reported that ES&S, Dominion, and Hart InterCivic “together control about 90 percent of the U.S. market for voting systems.” (11/3/20 Politico, *Playbook PM: Halftime* (Exhibit 98).)
- g. On October 28, 2020, it was reported that ES&S and Dominion together produce the technology used by over three-quarters of U.S. voters, and the third-largest player was Hart InterCivic. (10/28/20 The Wall Street Journal, *Early Voting Shines Spotlight on Consolidated Voting-Equipment Market* (Exhibit 96).)

3. This type of publicly available information showed that Smartmatic’s election technology, hardware, and software was not widely used in the 2020 U.S. election and was not used in contested states.

4. Third, each major company or manufacturer of election technology, hardware, and software identified on their own websites the use of their technology, hardware, or software in the 2020 U.S. election before and during the disinformation campaign. This also showed the very limited use of Smartmatic’s technology and software in the 2020 U.S. election (*i.e.*, only in one county in California). For example:

5. ES&S: Before and during the disinformation campaign, ES&S’s website provided information that contradicted statements by Mr. Lindell about the use of Smartmatic’s election technology in the 2020 U.S. election. For example, ES&S’s website identified the wide use of its voting machines in the country, including its success in the 2020 election in Wisconsin and Pennsylvania jurisdictions (both within contested states) and touted the success of its high-speed

ballot counting technology. (11/1/20 ES&S Website, *Getting the facts straight about elections* (Exhibit 77); 11/11/20 ES&S Website, *ES&S Equipment Efficiently, Accurately, Securely Records Election History* (Exhibit 78); 11/26/20 ES&S Website, *Getting the facts straight about elections* (Exhibit 79).)

6. Hart InterCivic: Before and during the disinformation campaign, Hart InterCivic's website provided information that contradicted statements by Mr. Lindell about the use of Smartmatic's election technology in the 2020 U.S. election. For example, Hart InterCivic's website identified the wide use of its technology systems in the country. (9/25/20 Hart Website, *Voting System Security Technology* (Exhibit 80); 9/28/20 Hart Website, *More Texas Counties Choose Hart InterCivic's Verity Voting* (Exhibit 81).)

7. Dominion: Before and during the disinformation campaign, Dominion's website provided information that contradicted statements by Mr. Lindell about the use of Smartmatic's election technology in the 2020 U.S. election. For example, Dominion's website identified that it was serving customers in 28 states and Puerto Rico. Its website indicates the states in which its machines were used for the 2020 election. (11/1/20 Dominion Website, *About Dominion* (Exhibit 69).)

8. Fourth, Smartmatic's website provided information about the company, its technology, hardware, and software, and its limited role in the 2020 U.S. election. Smartmatic's website stated as of November 14 that Smartmatic's ballot marking devices were "used exclusively in Lose [sic] Angeles County" and "were not used in any other state or any other jurisdiction in California or anywhere else in the U.S." (11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 65).) Smartmatic's website stated as of November 16 that Smartmatic voting machines were specifically not used in Pennsylvania, Georgia, Arizona,

Nevada, Michigan, or North Carolina. (11/16/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 66).)

9. Fifth, organizations involved in certifying voting technology like the Election Assistance Commission (EAC) published information about the use of election technology in the 2020 U.S. election.

10. For example, all the “key battleground states” in the 2020 election use some aspect of the federal testing and certification program for election technology and software. (NCSL, *Voting System Standards, Testing and Certification* (Exhibit 112).) The U.S. Election Assistance Commission (EAC) publicly identifies the voting systems that have been certified by the EAC by county and state. It provides a table on its website where a user can determine the manufacturer, product, and version of any technology and software used. It shows that Smartmatic was not used in any of the contested states. (U.S. EAC System Certification Process and Table of Voting Systems (Exhibit 113).)

11. Sixth, before and during the disinformation campaign, organizations who identify and track election and voting equipment made information publicly available that showed the limited role of Smartmatic and its election technology and software in the 2020 U.S. election. For example, Verified Voting (<http://www.verifiedvoting.org>) keeps a running map of all voting equipment in the United States, broken down by county. Anyone can get on the website and look up any county in the United States and determine whether a company’s voting technology or software was used, and obtain detailed descriptions of it. (Verified Voting Website, *The Verifier – Search – November 2020* (Exhibit 114).)

12. Seventh, before the disinformation campaign, there was publicly available information that contradicted statements that Smartmatic was denied use in the State of Texas.



Texas publicly identified on the website of its Secretary of State that it employed election systems from three companies: (1) Dominion, (2) ES&S, and (3) Hart InterCivic. There was also information publicly available that showed that it was Dominion—not Smartmatic—that had previously had issues with the State of Texas, but regardless, any issues had been resolved by the State of Texas since it selected and certified Dominion as one of its voting systems. (VoteTexas.gov, *How to Vote* (Exhibit 116); Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 117).)

13. Eighth, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs on February 4, 2021. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).) The suit laid out all of the above facts establishing that Smartmatic’s election technology and software were only used in Los Angeles County and were not used in any battleground states in the 2020 U.S. election.

14. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “don’t forget Smartmatic they’re right in there, I think that they’re the ones that went after Fox.” (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “it’s not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs.” (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**2. Mr. Lindell knew Smartmatic’s election technology, hardware, and software were not used to steal the 2020 U.S. election.**

15. A wealth of information was available to Mr. Lindell that showed his statements about Smartmatic and the use of its technology, hardware, and software to steal the 2020 U.S. election were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published his false statements knowing they were false based on this information.

16. First, before and during the disinformation campaign, there was publicly available and easily accessible information showing that Smartmatic's technology and software were not used widely in the 2020 U.S. election (and only in Los Angeles County) and thus could not have been used to steal a national election. This information is discussed above. This information also made clear that the system Smartmatic provided to Los Angeles County does not count, tabulate, or store votes and that County officials tabulate the votes by counting the paper ballots produced by the system and cast by voters. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 67); 11/11/20 Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 103).)

17. Second, before the disinformation campaign, there was publicly available and easily accessible information showing the efforts around securing the 2020 U.S. election, which make claims of a fixed, rigged, and stolen election not credible.

18. For example, a joint statement was issued by national security agencies confirming the security of the election infrastructure and process in place for the 2020 U.S. election and that any threats to the election would be vigilantly monitored. On November 5, 2019, the Department of Justice (Attorney General William Barr), the Department of Defense (Secretary Mark Esper), the Department of Homeland Security (Acting Secretary Kevin McAleenan), the Office of the Director of National Intelligence (Acting Director Joseph Maguire), the FBI (Director Christopher Wray), the National Security Agency (U.S. Cyber

Command Commander and Director Gen. Paul Nakasone), and the Cybersecurity Infrastructure Security Agency (Director Christopher Krebs) issued a joint statement.

19. In the statement, they stated that “[e]lection security is a top priority for the U.S. government” and that “[i]n an unprecedented level of coordination, the U.S. government is working with all 50 states and territories, local officials, and private sector partners to identify threats, broadly share information, and protect the democratic process.” “While at this time we have no evidence of a compromise or disruption to election infrastructure that would enable adversaries to prevent voting, change vote counts, or disrupt the ability to tally votes, we continue to vigilantly monitor any threats to U.S. elections.” (11/5/19 FBI National Press Office, *Joint Statement from DOJ, DOD, DHS, DNI, FBI, NSA, and CISA on Ensuring Security of 2020 Elections* (Exhibit 91).) No such threats were identified or reported by any of these agencies.

20. Third, before and during Defendants’ disinformation campaign, election experts and officials published statements rejecting any claims of vote rigging for the 2020 U.S. election. No state or federal government officials identified Smartmatic and its election technology and software as being used or even potentially implicated in a computer fraud to steal the 2020 U.S. election.

21. Indeed, election officials and election security experts have long been clear that voter fraud is extraordinarily rare, and our system has strong checks in place to protect the integrity of the voting process in the country. For example:

22. On September 24, 2020, Christopher Wray, Director of the FBI, stated during a hearing before the U.S. Senate Committee on Homeland Security and Government Affairs that “we have not seen, historically, any kind of coordinated national voter fraud effort in a major election, whether it’s by mail or otherwise.” (9/24/20 CNN Transcript (Exhibit 95); *see also*

9/24/20 C-SPAN Website, *FBI Director Says He Has Not Seen National Voter Fraud Effort by Mail*.<sup>8</sup>)

23. On November 4, 2020, the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASED) issued a statement: “[o]ver the course of the election, more than 100 million ballots were safely and securely cast, both in-person and by mail.” (11/4/20 Post-Election Joint Statement from NASS and NASED (Exhibit 99).)

24. The NASS and NASED also issued a joint statement on October 30, 2020, to “express their confidence in [the] nation’s elections systems, processes, safety and security.” It further stated that “[s]tate election officials have been working diligently to bolster cybersecurity, strengthen existing infrastructure, address election misinformation and disinformation, as well as provide administrative and technical support for local election officials.” And it made clear that “[v]oters and members of the media should be diligent in the face of election misinformation. Think critically about the source of information before repeating or retweeting it ... contact your election official with any questions or concerns and follow verified election official social media accounts.” (10/30/20 NASS and NASED 2020 Election Preparations and Reminders (Exhibit 97).)

25. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a definitive statement that “[t]he November 3rd election was the most secure in American history.” It further stated, “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” And “[o]ther security measures like

<sup>8</sup> Available at <http://www.c-span.org/video/?c4909510/fbi-director-national-voter-fraud-effort-mail>.

pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission's (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020." (11/12/20 CISA, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 105).)

26. On November 16, 2020, a group of election security specialists issued a statement saying that there was no credible evidence of computer fraud in the 2020 election outcome. These specialists indicated they had studied the security of voting machines, voting systems, and technology used for government elections for decades. They stated "[a]nyone asserting that a US election was 'rigged' is making an *extraordinary* claim, one that must be supported by persuasive and verifiable evidence. Merely citing the existence of technical flaws does not establish that an attack occurred, much less that it altered an election outcome. It is simply speculation." Further, "[w]e are aware of alarming assertions being made that the 2020 election was 'rigged' by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent. To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise." (11/16/20 Letter from Election Security Specialists (Exhibit 106) (emphasis in original).)

27. On November 19, 2020, it was reported that a spokeswoman for the National Association of Secretaries of State (NASS) said, "[e]lections in the United States of America are administered, run, counted and certified by state and local election officials. We have never heard of votes being tabulated in a foreign country." (11/19/20 Verify, *No evidence that presidential election votes were tallied overseas* (Exhibit 107).)

28. On November 29, 2020, a piece was published in which Chris Krebs, Former Director of the CISA, stated that election day “was quiet. And there was no indication or evidence that there was any evidence of hacking or compromise of election systems on, before, or after November 3 ... We did a good job. We did it right. I’d do it a thousand times over.” (11/30/20 CBS News, *Fired Director of U.S. Cyber Agency Chris Krebs Explains Why President Trump’s Claims of Election Interference Are False* (Exhibit 110).)

29. On December 1, 2020, Attorney General William Barr stated that “To date, [DOJ investigators] have not seen fraud on a scale that could have effected a different outcome in the election.” (12/1/20 Associated Press, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 111).)

30. Fourth, individual states that were contested in the 2020 U.S. election performed audits and/or issued statements verifying their election process and rejecting claims of fraud or rigging. For example:

31. Georgia: A November 19, 2020 Audit Report for the Georgia Presidential Contest stated “[f]rom November 11 to November 19, 2020, county election officials in Georgia, conducted a statewide risk-limiting audit of the Presidential Contest from the November 2020 General Election, as ordered by the Georgia Secretary of State.” In reporting the outcome, it noted “the audit confirmed the original result of the election, namely that Joe Biden won the Presidential Contest in the State of Georgia.” (emphasis in original) (11/19/20 Georgia Risk-Limiting Audit Report (Exhibit 43); *see also* 11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 44) (“Due to the tight margin of the race and the principles of risk-limiting audits, this audit was a full

manual tally of all votes cast. The audit confirmed that the original machine account accurately portrayed the winner of the election.”.)

32. On November 30, 2020, Georgia’s Secretary of State, Brad Raffensperger, held a press conference and made clear that none of the allegations of potential election violations cast doubt on the integrity of the state’s election results. At the conference, he stated: “There are those who are exploiting the emotions of many Trump supports with fantastic claims, half-truths, misinformation, and, frankly, they are misleading the President as well apparently.” (11/30/20 *Georgia Press Conference on 2020 Election Recount Update Transcript* (Exhibit 45).)

33. On January 6, 2021, Georgia’s Secretary of State, Brad Raffensperger, sent a letter to Congress with a “Point by Point Refutation of False Claims about Georgia Elections.” It described the multiple steps taken to confirm that the Presidential selection result was accurate and the software on the voting machines was accurate. It includes a section that addresses the allegations regarding Dominion Voting Machines and clearly states the claims were false. (1/6/21 Georgia Secretary of State Letter to Congress (Exhibit 47).)

34. Michigan: Michigan’s Bureau of Election made information about its election security available on its website, [www.Michigan.gov/ElectionSecurity](http://www.Michigan.gov/ElectionSecurity), including that “[t]here is no evidence voting machines in Michigan have ever been compromised or that votes have been changed.” (1/5/21 Michigan Secretary of State, *Michigan’s election was secure and fair, and the results are accurate* (Exhibit 51).)

35. Pennsylvania: On November 12, 2020, Governor Tom Wolf tweeted, from his official government account, “Allegations of fraud and illegal activity have been repeatedly debunked. Pennsylvania had a free, fair, and secure election.” (11/12/20 Twitter, @GovernorTomWolf (Exhibit 55).)



36. On November 13, 2020, Governor Wolf issued the following statement: “All Pennsylvanians can have confidence in our election system and the accuracy of the vote.” “The U.S. Department of Homeland Security’s conclusion that our nation had the most secure election in history reaffirms the commitment to protecting our votes by local, state and national officials. Allegations of fraud and unfounded rumors of illegal activity have been repeatedly debunked. Those deliberate and false attacks are un-American and harm our democracy, and we should reject them. I thank the election and cyber-security experts for verifying that our nation’s election was protected and secure.” (11/13/20 Governor Tom Wolf: *U.S. Election was ‘most secure in American history’ Federal Agency says* (Exhibit 56).)

37. Arizona: On December 1, 2020, in response to allegations from former President Trump that Arizona’s election had been tainted by “corruption,” Governor Doug Ducey issued a nine-tweet thread explaining that Arizona’s election had been fair and free from fraud. Specifically, he stated: “In Arizona, we have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election.” (12/1/20 Twitter, @DougDucey (Exhibit 58).)

38. Wisconsin: On or about December 16, 2020, Wisconsin’s Elections Commission, on its website, answered the question of whether Dominion voting equipment flipped votes from Trump to Biden: “[a]bsolutely not. Twenty-eight reporting units using Dominion systems were randomly selected after the election and audited for the Presidential contest, and all the audits confirmed that the hand-counted paper ballots exactly matched the electronic results from the machines.” It also answered the question of whether there was widespread fraud in the 2020 election - saying there was no evidence of such fraud. And it stated that the claims made about

Dominion have not been substantiated. (12/16/20 Wisconsin Elections Commission, *Did Dominion Voting Equipment Slip Votes from Trump to Biden?* (Exhibit 61).)

39. Nevada: On November 5, 2020, Nevada Governor Steve Sisolak held a press conference, in which he stated: “Nevada is widely recognized as being a leader in election administration, and I continue to have the utmost confidence in the abilities of Nevada’s local election officials and Secretary of State Barbara Cegavske to accurately count every eligible vote cast in the Silver State. Our election administration officials are required to keep counting under state law and that is exactly what they’ll do until every vote is counted. Despite national pressure, our election officials and public servants continue to prioritize accuracy and fairness in this process. That should make all Nevadans proud. I ask all Nevadans to support our election workers, trust this process and respect the results when they are certified as final.” (11/5/20 Nevada Governor, *Governor Sisolak issues statement on President Trump’s comments on the election* (Exhibit 63).)

40. And Nevada state officials have expressly stated after certification of the election results that there was no evidence of voter fraud. In Secretary of State Barbara Cegavske’s *Facts v. Myths: Nevada 2020 Post-General Election* document, posted on the Nevada Secretary of State website, the Secretary stated, “we have yet to see any evidence of widespread fraud.” (Nevada Secretary of State, *Facts v. Myths: Nevada 2020 Post-General Election* (Exhibit 64).)

41. In addition, on November 10, 2020, the New York Times reported contacting officials in every state on November 9 and 10, and that officials in all states but Texas reported no major voting issues. (11/10/20 The New York Times, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 101).)

42. Fifth, election technology companies issued public statements rejecting claims of fraud or rigging the 2020 U.S. election. For example, on November 7, 2020, Dominion issued a statement that “[t]here are no credible reports or evidence of any system software errors in Georgia or Michigan.” (11/7/20 Dominion Website, *Statement on Viral Claims/Rumors About Dominion Voting Systems* (Exhibit 70).)

43. On November 13, 2020, Dominion’s website included a page to set the record straight, including that the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) has debunked claims of voter fraud: “There is no evidence that any voting system deleted or lost votes, changed votes or was in any way compromised.” It further stated “[n]o credible reports or evidence of any software issues exist.” (11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 71); 11/17/20 Dominion Website, *Setting the Record Straight, Facts & Rumors* (Exhibit 72); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 76).)

44. Sixth, on December 23, 2020, January 8, 2021, and February 4, 2021, Dominion sent retraction demand letters to Mr. Lindell, putting him on notice that his statements were false. (US Dominion, Inc., Retraction Demand Letters to Lindell (Exhibit 38).) In the January 8 letter, Dominion attached five publicly available news articles that specifically confirmed there was no rigging, hacking, or manipulation of votes in the 2020 election. (*Id.*) The January 8 letter put Mr. Lindell on notice that Maricopa County, Arizona’s Board of Supervisors Chairman Clint Hickman (a Republican) reported on November 17, 2020, that there was “no evidence of fraud or misconduct” in the 2020 election. The January 8 letter put Mr. Lindell on notice that the Arizona Secretary of State Katie Hobbs stated on December 4, 2020, “the facts remain that this historic

election had tremendous turnout and was both secure and accurate.” The January 8 letter put Mr. Lindell on notice that “[e]very single vote can be audited with hand counts.” The January 8 letter put Mr. Lindell on notice that Georgia’s Voting System Implementation Manager said, on November 30, 2020, “I can guarantee that this is the most secure election in the State of Georgia.”

45. Seventh, multiple federal district courts rejected allegations that the 2020 U.S. election was “rigged” before Mr. Lindell began making defamatory statements about Smartmatic. *See, e.g., King v. Whitmer*, 505 F. Supp. 3d 720, 738 (E.D. Mich. 2020) (denying the requested relief because plaintiffs offered “nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden”); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 721 (D. Ariz. 2020) (dismissing the case and finding over 300 pages of attachments to the complaint were “based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections,” and holding that the allegations were “sorely wanting of relevant or reliable evidence”); *Donald J. Trump for President, Inc. v. Sec’y of Pa.*, 830 F. App’x 377, 381 (3d Cir. 2020) (“Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”).

46. Eighth, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs on February 4, 2021. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).) The suit laid out all of the above facts establishing that Smartmatic’s technology, hardware, and software was not used to steal the 2020 U.S. election.

47. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “don’t forget Smartmatic they’re right in there, I think that they’re the ones that went after Fox.” (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “it’s not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs.” (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**3. Mr. Lindell knew that Smartmatic’s election technology and software were not connected to the Internet during the 2020 U.S. election.**

48. Information was available to Mr. Lindell that showed his statements about Smartmatic’s election technology and software being connected to the Internet during active ballot-casting were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published his false statements knowing they were false based on this information.

49. First, there were articles available on Smartmatic’s website before and during the disinformation campaign about the use of Smartmatic’s technology and software in Los Angeles County (and owned by the county). These articles show that the technology is not connected to the Internet, is not used to count votes, and does not store any data. It is noted that county officials tabulate votes by counting the paper ballots produced by the devices and cast by voters. (See, e.g., 11/11/20 Smartmatic Website, *Los Angeles County—Voting Solutions for All People* (Exhibit 103).)

50. Second, before and during the disinformation campaign, Dominion issued a similar statement contradicting claims related to any voting machines using the Internet during active ballot-casting. (11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 71); 11/21/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 73); 11/26/20 Dominion Website, *Statement from Dominion on Sidney Powell's Charges* (Exhibit 75); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 76).)

51. Third, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo and Lou Dobbs on February 4, 2021. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).) The suit included as an exhibit a Smartmatic website page establishing that Smartmatic's election technology was not connected to the Internet.

52. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon's War Room Podcast and said, "don't forget Smartmatic they're right in there, I think that they're the ones that went after Fox." (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon's War Room Podcast and said, "it's not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs." (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**4. Mr. Lindell knew that Smartmatic's election technology and software were not compromised or hacked by China or other foreign countries during the 2020 U.S. election.**

53. Information was available to Mr. Lindell that showed his statements about Smartmatic's election technology and software being compromised or hacked during the 2020 U.S. election were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published the false statements knowing they were false based on this information.

54. First, as discussed above, before and during the disinformation campaign, there was publicly available and easily accessible information that Smartmatic's technology and software were used in only one county in the 2020 U.S. election, Los Angeles County. Mr. Lindell's statements about compromises and/or hacking for the 2020 U.S. election primarily related to contested states and did not include the one state where Smartmatic's election technology and software were used (California was not contested).

55. Second, before and during the disinformation campaign, there was publicly available information that showed there were no issues in the one county where Smartmatic's election technology and software were used during the 2020 U.S. election, Los Angeles County. Smartmatic and its system came through the 2020 election in that county "with flying colors" as noted by an initial case study made available on its website. There are no reports that Smartmatic's election technology and software had been compromised or hacked. (11/11/20 Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 103); 11/10/20 Los Angeles Times, *L.A.'s \$300-million voting systems gets high marks as votes trickle in across California* (Exhibit 102).)



56. There was also information publicly available before the disinformation campaign about the work of Los Angeles County to certify Smartmatic's voting system for use, including descriptions of the state testing and certification process that exceeds the guidelines recommended by the U.S. Elections Assistance Commission (EAC) (and California's standards are also considered the most rigorous in the country). That information showed that every system goes through functional testing, source code review, accessibility and volume testing, and red team security testing that involved experts trying to "break into" the voting system. Smartmatic's system for Los Angeles County passed. (10/1/20 California Secretary of State Press Release, *Los Angeles County Launches VSAP 2.1 Voting System Certified* (Exhibit 39); 12/15/20 California Secretary of State Website, *Voting Technologies Approved for Use in California* (Exhibit 41).)

57. The Smartmatic system that was actually used in the general election for Los Angeles County was VSAP 2.1, which was certified by California in October 2020. California Secretary of State Padilla said in a press release that VSAP was a "historic milestone in election administration" and that the "public design and testing process for VSAP was one of the lengthiest and most inclusive ever conducted for voting technology." (10/1/20 California Secretary of State Press Release, *Los Angeles County Launches VSAP 2.1 Voting System Certified* (Exhibit 39).) Secretary Padilla said that the system underwent functional testing and source code review, among other things, and that California's Voting System Standards exceed the Voluntary Voting System Guidelines recommended by the U.S. Elections Assistance Commission and "are considered the most rigorous in the country." In his October 1, 2020 certification, Secretary Padilla stated that VSAP 2.1 "satisfies the accuracy, accessibility, usability, and security standards set forth in the California Voting Systems Standards and

California law.” (10/1/20 California Secretary of State, *Conditional Approval of Los Angeles County’s Voting Solutions for All People (VSAP) 2.1 Voting Systems* (Exhibit 40).)

58. Third, as discussed above, before and during the disinformation campaign, there was publicly available information that the 2020 U.S. election was secure, and federal, state, and local officials confirmed there was no basis to any claims of hacking. For example:

- a. On November 4, 2020, the Director of the Cybersecurity and Infrastructure Security Agency issued a statement that “after millions of Americans voted, we have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies.” (11/4/20 CISA, *Statement from CISA Director Krebs Following Final Day of Voting* (Exhibit 100).)
- b. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a joint statement that “[t]he November 3<sup>rd</sup> election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result.” It further stated, “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” And “[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission’s (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.” “While we know there are many unfounded claims and

opportunities for misinformation about the process of our selections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too.” (11/12/20 CISA, *Joint Statement from Elections Infrastructure Government Coordinating Counsel & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 105).)

- c. On November 12, 2020, a competitor company’s Vice Chair, Sam Derheimer, signed the Joint Statement from the Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees providing that “There is no evidence that any voting system deleted or lost votes, changed votes, or was in any compromised.” (11/12/20 CISA, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 105).)
- d. On December 1, 2020, Attorney General Barr specifically addressed Defendants claims about Smartmatic and Dominion in an interview with the Associated Press: “There’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven’t seen anything to substantiate that.” (12/1/20 Associated Press, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 111).)

- e. On June 23, 2021, the Republican-led Michigan Senate Oversight Committee, chaired by Trump ally Senator Ed McBroom, released a 55-page report, which stated that “The Committee found no evidence of widespread or systemic fraud in Michigan’s prosecution of the 2020 election” and expressed total confidence that the state’s 2020 election outcome—that Biden defeated Trump by about 155,000 votes, or 2.8%—“represent[s] the true results of the ballots cast by the people of Michigan.” (6/23/21, Michigan Senate Oversight Committee, *Report on the November 2020 Election in Michigan* (Exhibit 133).)
- f. On June 24, 2021, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, suspended Rudolph Giuliani from the practice of law after it determined that he had “made knowing ***false and misleading factual statements*** to support his claim that the presidential election was stolen from his client [Donald Trump],” based on “uncontroverted evidence” that he made “demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.” (*Matter of Giuliani*, 1976 A.D.3d 1, 4 (1st Dep’t 2021) (Exhibit 134).)
- g. On June 27, 2021, reporting revealed that Attorney General William Barr had “received two briefings from cybersecurity experts at the Department of Homeland Security and the FBI” about the allegations of rigged voting machines, after which he and his team at the Department of Justice

“realized from the beginning it was just bullshit.” Barr further disclosed that “even if the machines somehow changed the count, it would show up when they were recounted by hand,” and that Dominion’s machines were just “counting machine[s], and they save everything that was counted. So you just reconcile the two. There had been no discrepancy reported anywhere, and I’m still not aware of any discrepancy.” (6/27/21 *The Atlantic, Inside William Barr’s Breakup with Trump* (Exhibit 135).)

- h. On August 3, 2021, a federal judge in Colorado disciplined two lawyers who filed a frivolous lawsuit based on lies against Dominion following the election, concluding that the case was frivolous and brought in bad faith. In his 68-page opinion, Judge N. Reid Neureiter concluded: “Albeit disorganized and fantastical, the Complaint’s allegations are extraordinarily serious and, if accepted as true by large numbers of people, are the stuff of which violent insurrections are made.” (*O’Rourke et al. v. Dominion Voting Systems, Inc. et al.*, No. 20-cv-3747, 2021 WL 3400671 (D. Colo. Aug. 3, 2021) (Exhibit 136).)

59. Fourth, there was publicly available information by government officials that have authority over the election process about procedures and processes to test and certify any election technology used, including for the 2020 U.S. election. The information clearly shows various and rigorous testing and certification processes to prevent hacking or any compromise to the voting systems during the election. (*CISA, #Protect2020 Rumor vs. Reality* (Exhibit 115).)

60. Fifth, before and during the disinformation campaign, Smartmatic’s website indicated that its technology had been validated by institutions such as the Carter Center, the

United Nations, the Organization of American States, and the European Union. Smartmatic also provided information that its election software had processed more than 5 billion votes over 20 years without a breach. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 67).)

61. Sixth, before and during the disinformation campaign, there was publicly available information that before use in elections, voting systems undergo hardware and software testing to ensure they are consistent with state and/or federal requirements. Under these programs, voting system manufacturers submit their systems to undergo testing and review by an accredited laboratory or state testers. This testing checks if systems function as designed and meet applicable state and/or federal requirements or standards for accuracy, privacy, and accessibility. Certification testing usually includes a review of a system's source code as well as environmental, security, and functional testing. (CISA, *#Protect2020 Rumor vs. Reality* (Exhibit 115).)

62. Seventh, as discussed above, on January 8, 2021, Dominion sent Mr. Lindell a retraction demand letter, officially putting him on notice that his claims about voting machine fraud were false, and that Georgia and Arizona had both publicly confirmed the results of the 2020 election. (US Dominion Inc., *Retraction Demand Letters to Lindell* (Exhibit 38).)

63. Eighth, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs on February 4, 2021. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).) The suit laid out many of the above facts establishing that Smartmatic's election technology and software were not hacked by any foreign country, including China.

64. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon's War Room Podcast and said, "don't forget Smartmatic they're right in there, I think that they're the ones that went after Fox." (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon's War Room Podcast and said, "it's not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs." (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**5. Mr. Lindell knew that Smartmatic's election technology, hardware, and software were not used by Dominion or ES&S during the 2020 U.S. election.**

65. Information was available to Mr. Lindell that showed his statements about Smartmatic's election technology, hardware, and software being used by Dominion and/or ES&S in the 2020 U.S. election were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published his false statements knowing they were false based on this information.

66. First, before and during the disinformation campaign, there was publicly available and easily accessible information that shows Smartmatic, Dominion, and ES&S are all separate companies.

67. For example, the state filings for Smartmatic, Dominion, and ES&S show that they are three separate companies. (3/30/20 Smartmatic USA Corp., Annual Report filed with Florida Secretary of State (Exhibit 94); 6/25/10 Dominion Voting Systems, Inc., Statement of Foreign Entity Authority filed with Colorado Secretary of State (Exhibit 82); 6/21/2019 ES&S,



Letter to North Carolina State Board of Elections and Ethics Enforcement, Ownership of Electronic Systems & Software, LLC (Exhibit 139).)

68. There was also litigation between the Dominion and Smartmatic, and the public filings clearly establish those two companies are separate, they are competitors, and that their technology is separate. (9/18/12 Smartmatic Press Release, *Smartmatic International Sues Dominion Voting Systems for Licensing Breach and Improper Business Practices* (Exhibit 83); 5/1/13 Mem. Opinion in *Smartmatic Int'l Corp. v. Dominion Voting Systems Int'l Corp.*, No. 7844-VCP (Del. Ch.) (Exhibit 85).)

69. Second, as discussed above, before and during the disinformation campaign, there was publicly available and easily accessible information that Smartmatic's election technology and software were used in only one county in the 2020 U.S. election, Los Angeles County. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Smartmatic/Los Angeles County* (Exhibit 118).)

70. Smartmatic's own website also had information that made clear that Smartmatic had no ties to Dominion Voting Systems—no ownership ties, no software leasing, and no business at all between the two companies. It further noted that in 2009, Smartmatic licensed scanning machines from Dominion for use in the Philippines for a Smartmatic election project, which was the only contract with Dominion, that it was short-lived, and ended in a lawsuit. It further noted that that was the first and last time that Smartmatic and Dominion tried to do business together. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 67).)

71. Third, Dominion's website similarly provided information that made clear it was a distinctly separate company from, and fierce competitor to Smartmatic, and not using Smartmatic's election technology and software. (11/13/20 Dominion Website, *Election 2020:*

*Setting the Record Straight: Facts & Rumors* (Exhibit 71); 11/17/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 72); 11/21/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 73); 11/25/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 74); 11/26/20, Dominion Website, *Statement from Dominion on Sidney Powell's Charges* (Exhibit 75); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 76).)

72. Fourth, ES&S's website made available information that its voting systems do not use Smartmatic software, and that it has no financial or ownership ties to any other voting system manufacturer. (11/29/2021 ES&S Website, *Let's get the facts straight* (Exhibit 120); 12/25/2021 ES&S Website, *Let's get the facts straight* (Exhibit 121); 1/2/2021 ES&S Website, *Let's get the facts straight* (Exhibit 122).)

73. Fifth, before and during the disinformation campaign, there was publicly available and easily accessible information related to the election technology used in each county and state that showed the specific systems and technology and software used in such county and state, along with the manufacturers identity. This information showed that Smartmatic's technology, hardware, and software were not used by Dominion or ES&S in the 2020 U.S. election.

74. For example, Verified Voting (<http://www.verifiedvoting.org>) keeps a running map of all voting equipment in the United States, broken down by county. It separates voting equipment into three categories—hand marked paper ballots, ballot marking devices (BMDs) and systems, and direct recording electronic (DRE) systems. It identifies for each county in every state the polling place equipment, including the type of equipment used, the make, and the model. Any company that makes the equipment used is identified. The specific technology and

software used by Dominion and ES&S in the 2020 U.S. election can be found and is described in detail for each county. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Dominion Voting Systems* (Exhibit 119).)

75. Sixth, before and during Mr. Lindell’s disinformation campaign against Smartmatic, Dominion filed suit against Sidney Powell (January 8, 2021); Rudolph Giuliani (January 25, 2021); Mr. Lindell (February 22, 2021); and Fox News Network (March 26, 2021). Dkt. 001, *US Dominion, Inc. et al., v. Sidney Powell et al.*, D.D.C., No. 21-cv-00040-CJN; Dkt. 001, *US Dominion, Inc. et al., v. Rudolph W. Giuliani*, D.D.C., No. 2021-cv-00213; Dkt. 001, *US Dominion, Inc. et al., v. My Pillow, Inc. and Michael J. Lindell*, D.D.C., No. 21-cv-00445; Dkt. 001, *US Dominion, Inc. et al., v. Fox News Network, LLC*, Delaware Superior Court, No. N21C-03-257 EMD. These suits laid out many facts establishing that Smartmatic and Dominion were separate companies that used separate election technology and software during the 2020 U.S. election.

76. Seventh, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs on February 4, 2021. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).) The suit laid out many of the above facts establishing that Smartmatic, Dominion, and ES&S were separate companies that used separate election technology and software during the 2020 U.S. election.

77. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “don’t forget Smartmatic

they're right in there, I think that they're the ones that went after Fox.” (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “it’s not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs.” (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**6. Mr. Lindell knew that Smartmatic was not engaged in a widespread criminal conspiracy to steal the 2020 U.S. election.**

78. Information was available to Mr. Lindell that showed his statements about Smartmatic being engaged in a widespread criminal conspiracy to steal the 2020 U.S. election were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published his false statements knowing they were false based on this information.

79. First, as discussed above, on January 8, 2021, Dominion sent Mr. Lindell a retraction demand letter, officially putting him on notice that his claims about voting machine fraud were false. (US Dominion, Inc., Retraction Demand Letters to Lindell (Exhibit 38).) The letter put Mr. Lindell on notice that he “quote-tweeted facially unreliable and discredited falsehoods” and “gave empty assurances” of “overwhelming proof” of wrongdoing. The letter informed Mr. Lindell that he has “failed to identify a scintilla of credible evidence that even *suggests* that Dominion is somehow involved in a global conspiracy to harvest millions of votes in favor of President-elect Biden” because “no such evidence exists.”

80. Second, before and during the disinformation campaign, Smartmatic’s website noted that it does not have any plans, schemes or “deals” with anyone—government or business—to rig or steal elections, including the 2020 U.S. election. It also stated that its founders adhere to a strict ethics code that prohibits them from making political donations.

(11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 65); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 67).)

81. Third, before and during Mr. Lindell’s disinformation campaign against Smartmatic, Dominion filed suit against Sidney Powell (January 8, 2021); Rudolph Giuliani (January 25, 2021); Mr. Lindell (February 22, 2021); and Fox News Network (March 26, 2021). Dkt. 001, *US Dominion, Inc. et al., v. Sidney Powell et al.*, D.D.C., No. 21-cv-00040-CJN; Dkt. 001, *US Dominion, Inc. et al., v. Rudolph W. Giuliani*, D.D.C., No. 2021-cv-00213; Dkt. 001, *US Dominion, Inc. et al., v. My Pillow, Inc. and Michael J. Lindell*, D.D.C., No. 21-cv-00445; Dkt. 001, *US Dominion, Inc. et al., v. Fox News Network, LLC*, Delaware Superior Court, No. N21C-03-257 EMD. These suits laid out many facts establishing that Smartmatic and Dominion were not involved in a criminal conspiracy to steal the 2020 U.S. election.

82. Fourth, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs on February 4, 2021. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).) The suit laid out the above facts establishing that Smartmatic was not involved in a criminal conspiracy to steal the 2020 U.S. election.

83. Fifth, multiple federal district courts rejected allegations that the 2020 U.S. election was “rigged” before Mr. Lindell began making defamatory statements about Smartmatic. *See, e.g., King v. Whitmer*, 505 F. Supp. 3d 720, 738 (E.D. Mich. 2020) (denying the requested relief because plaintiffs offered “nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Bide.”); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 721 (D. Ariz. 2020) (dismissing the case and finding over 300 pages of attachments to the complaint were “based on anonymous witnesses, hearsay,

and irrelevant analysis of unrelated elections,” and holding that the allegations were “sorely wanting of relevant or reliable evidence”); *Donald J. Trump for President, Inc. v. Sec’y of Pa.*, 830 F. App’x 377, 381 (3d Cir. 2020) (“Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”).

84. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “don’t forget Smartmatic they’re right in there, I think that they’re the ones that went after Fox.” (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon’s War Room Podcast and said, “it’s not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs.” (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**7. Mr. Lindell knew Smartmatic’s election technology and software has not been designed and used to steal elections.**

85. Information was available to Mr. Lindell that showed his statements about Smartmatic’s election technology and software being designed and used to steal elections were false. Mr. Lindell either ignored this information, and thereby acted with reckless disregard, or published his false statements knowing they were false based on this information.

86. First, before and during the disinformation campaign, information about audited elections that Smartmatic participated in, all over the world, was publicly available, and such information does not support statements that it has been used to steal elections.

87. Second, before and during the disinformation campaign, information about the success and security of Smartmatic's election technology and software was publicly available from its website. For example, its website stated that its election technology had handled billions of votes in election projects on five continents without a single discrepancy and has never been compromised. Its election technology and software were designed to ensure secure, transparent, and auditable elections (and not to change votes or rig elections). (Smartmatic Website, *Facts About Smartmatic* (Exhibit 68).)

88. There was publicly available information at the time of the disinformation campaign to show that third-party validators had authenticated Smartmatic's technology, including the State of California, PriceWaterhouseCoopers, and the U.S. Election Assistance Commission. The United Nations, Organization of American States, and the European Union have also validated Smartmatic's technology. Former U.S. President Jimmy Carter of the Carter Center has called Smartmatic's electronic voting solution in Venezuela "the best in the world." (9/21/12 Smartmatic Press Release, *Carter: "The electoral system in Venezuela is the best in the world"* (Exhibit 84); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 67).)

89. Third, as discussed above, before and during the disinformation campaign, information about the certification of Smartmatic's election technology for Los Angeles County and Smartmatic's registration with the U.S. Election Assistance Commission was publicly available.

90. Fourth, before and during the disinformation campaign, information was publicly available that showed Smartmatic had been approved as a Department of Defense vendor and a founding member of the Department of Homeland Security Election Infrastructure Sector Coordinating Council.



91. Fifth, Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs on February 4, 2021. The suit laid out all of the above facts establishing that Smartmatic was not designed to steal elections. (Dkt. 001, *Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Supreme Court of the State of New York, County of New York, Index No. 151136/2021 (Exhibit 138).)

92. Mr. Lindell knew that Smartmatic filed suit against Fox, Rudolph Giuliani, Sidney Powell, Jeanine Pirro, Maria Bartiromo, and Lou Dobbs. Mr. Lindell discussed the suit publicly during his disinformation campaign against Smartmatic. For example, on February 5, 2021, Mr. Lindell appeared on Bannon's War Room Podcast and said, "don't forget Smartmatic they're right in there, I think that they're the ones that went after Fox." (*War Room* podcast, February 5, 2021 (Exhibit 9).) On February 6, 2021, Mr. Lindell appeared on Bannon's War Room Podcast and said, "it's not funny that they have perfect timing, that Smartmatic comes in and sues Fox yesterday and gets rid of Lou Dobbs." (*War Room* podcast, February 6, 2021 (Exhibit 11).)

**C. Mr. Lindell also had obvious reasons to doubt the veracity of his guests.**

93. Mr. Lindell brought a myriad of guests on his four-part "Absolute" documentaries and to his Cyber Symposium. Mr. Lindell knew that the individuals he brought on the documentary series and to speak at his Cyber Symposium were not credible nor legitimate "experts." These guests included Mary Fanning, Phil Waldron, Matthew DePerno, Russell Ramsland, Dr. Shiva Ayyudurai, Patrick Colbeck, Michael Flynn, Dr. Frank Douglas, and Joel Oltmann. Mr. Lindell knew that the statements these guests were making had been publicly discredited. Mr. Lindell had obvious reasons to doubt the guests' veracity but misled the audience as to their credibility.

94. Mary Fanning: Ms. Fanning is a co-author of articles at *The American Report*—an Internet conspiracy theory blog—and self-proclaimed “national security” investigative reporter. Ms. Fanning has no publicly available credentials in the field of national security or journalism. Ms. Fanning’s LinkedIn profile does not have any work history, credentials, or education related to cybersecurity, journalism, or election integrity. (*Mary Fanning Kirchhoefer*, LinkedIn (Exhibit 137).) In the past, Ms. Fanning perpetuated conspiracy theories, including the “Hammer and Scorecard” theory, which was debunked by Trump appointee Chris Krebs and other sources. (11/7/20 Twitter, @CISAKrebs (Exhibit 125).)

95. Mr. Lindell was aware or should have been aware that Ms. Fanning is an unreliable source for information on Smartmatic and that she had no evidence to support her claims about Smartmatic. Ms. Fanning appeared in Mr. Lindell’s documentary “Absolute Proof” and claimed that voting machines were hacked by China. Ms. Fanning did not provide any reliable evidence to substantiate this claim and had no firsthand knowledge to support this claim. Mr. Lindell published Ms. Fanning’s statements without informing viewers of the various reasons Ms. Fanning was not credible.

96. Russell Ramsland: Despite being touted by Mr. Lindell as an expert in cyber forensics and security, Mr. Ramsland is neither. Mr. Ramsland was discredited by two courts for spreading false facts about the 2020 election before he appeared in Mr. Lindell’s “Absolute” documentaries. First, in December 2020, the United States District Court for the District of Arizona dismissed a case challenging the results of the 2020 election, in part due to the “implausible conclusions” of Mr. Ramsland, among others. The court determined the sources in that case to be “wholly unreliable sources.” *Bower v. Ducey*, No. 2-20-cv-02321 (D. Ariz. Dec. 9, 2020). Second, in December 2020, a Delaware judge determined that Mr. Ramsland had

provided “materially false information” in support of his claims of voter manipulation. Rule to Show Cause, *Page v. Oath, Inc.*, No. S20-07-030 (Del. Super. Ct. Dec. 18, 2020).

97. Mr. Lindell was aware or should have been aware that Mr. Ramsland was an unreliable source for information about Smartmatic based solely on the above Delaware and Arizona court opinions. But even if he did not, Mr. Lindell was put on notice that Mr. Ramsland was not a credible source on election integrity after Dominion filed suit against Rudolph Giuliani in January 2021, exposing the above-mentioned facts. Dominion also sent Mr. Lindell a retraction demand letter on February 4, 2021, directing him to its Complaint against Rudolph Giuliani for the truth about Mr. Ramsland. (US Dominion, Inc., Retraction Demand Letters to Lindell (Exhibit 38).)

98. When Mr. Ramsland appeared in the “Absolute” documentaries, Mr. Lindell knew he did not have any evidence to support his claims about Smartmatic. Mr. Lindell published Mr. Ramsland’s statements without informing viewers of the various reasons Mr. Ramsland was not credible.

99. Dr. Shiva Ayyadurai: Dr. Ayyadurai (referred to as “Dr. Shiva” in “Absolute Proof”) was billed as an “expert at system science and pattern analysis” with “four MIT degrees.” (*Absolute Proof* (Exhibit 1).) Dr. Shiva purports to have invented e-mail at only 14-years-old. This claim has been debunked. E-mail was invented by the U.S. government’s Advanced Research Projects Agency (2/23/12 National Museum of American History Statement (Exhibit 123).) Dr. Shiva has also adhered to conspiracy theories in the past, including that “the Coronavirus PATENT is owned by Pirbright Institute.” (1/24/20 PolitiFact, *Fact-checking hoaxes and conspiracies about the coronavirus* (Exhibit 124).) The patent Mr. Ayyadurai cited

as evidence for that theory related to a vaccine-form of coronavirus that could prevent diseases in birds and other animals.

100. Mr. Lindell was aware or should have been aware that Dr. Ayyadurai was an unreliable source for information about Smartmatic and is known for promoting unsubstantiated conspiracy theories. When Dr. Ayyadurai appeared in “Absolute Proof,” Mr. Lindell knew that he did not have any evidence to support his claims about Smartmatic. Mr. Lindell published Dr. Ayyadurai’s statements without informing viewers of the various reasons he was not credible.

101. Joseph Oltmann: Mr. Oltmann (a.k.a. “Mr. Otto”) spoke on stage at Mike Lindell’s Cyber Symposium. Mr. Oltmann rose to fame after claiming that in 2020 he infiltrated an antifa phone call and overheard an “Eric” at Dominion assuring that Donald Trump would lose the 2020 U.S. election. Mr. Oltmann has no election-related or cybersecurity credentials. Mr. Oltmann has subsequently been sued by American citizen Eric Coomer for perpetuating false allegations.

102. Mr. Lindell was aware or should have been aware that Mr. Oltmann was an unreliable source for information about Smartmatic. When Mr. Oltmann appeared at Mr. Lindell’s Cyber Symposium, Mr. Lindell knew that he did not have any evidence to support his claims about Smartmatic. Mr. Lindell published Mr. Oltmann’s statements without informing viewers of the various reasons he was not credible.

103. Michael Flynn: Mr. Flynn is a retired U.S. Army lieutenant general who twice pled guilty in 2018 to lying to the FBI about contacts with Russia. He was subsequently removed from his position as White House national security advisor and promptly embroiled in a legal battle. Mr. Flynn was banned from Twitter in January 2021 in accordance with a policy on

“Coordinated Harmful Activity” for sharing QAnon conspiracy theory material. (NBC News, *Twitter bans Michael Flynn, Sidney Powell in QAnon account purge* (Exhibit 128).)

104. Mr. Lindell was aware or should have been aware that Mr. Flynn was an unreliable source for information about Smartmatic and is known for promoting unsubstantiated conspiracy theories. When Mr. Flynn appeared in “Absolute Interference,” Mr. Lindell knew that he did not have any evidence to support his claims about Smartmatic. Mr. Lindell published Mr. Flynn’s statements without informing viewers of the various reasons he was not credible.

105. Mr. Lindell was aware or should have been aware that this cast of characters was not credible or reliable. Mr. Lindell chose to broadcast, publish, and republish their defamatory statements about Smartmatic anyway.

**D. Mr. Lindell failed to exercise due care when publishing defamatory statements about Smartmatic.**

106. Mr. Lindell did not exercise due care when he published defamatory statements about Smartmatic. Mr. Lindell acted with reckless disregard for the truth in investigating or verifying the statements that he made and that his guests made. Mr. Lindell published misleading statements and portrayed them as facts and evidence. Mr. Lindell did not adhere to ethical obligations expected from those who widely disseminate information.

107. If Mr. Lindell had exercised due care, he would not have been able to: (a) purposefully avoid learning the truth about Smartmatic and its technology and software used in the 2020 U.S. election; (b) publish the factually inaccurate and misleading reports about Smartmatic and its technology and software; and (c) interject Smartmatic into a wide-ranging criminal fraud to fix the 2020 U.S. election.

108. Mr. Lindell failed to exercise due care for at least eleven reasons. First, Mr. Lindell did not exercise due care by being accurate or fair when gathering and reporting

information. Mr. Lindell stated and repeated information that he knew was inaccurate, stated and repeated information he knew was misleading, and purposefully avoided learning the truth. The truth was inconsistent with Mr. Lindell's preconceived narrative that Smartmatic had stolen the 2020 U.S. election.

109. Second, Mr. Lindell did not exercise due care by verifying information before releasing it. Mr. Lindell did not corroborate information provided by his sources (whom he had obvious reasons to doubt) and did not verify or corroborate the many serious and broad-ranging statements and implications he published about Smartmatic. Mr. Lindell made no effort to reach out to Smartmatic before the start of his disinformation campaign for comment and/or to verify the accuracy of any statements and implications being made about Smartmatic, its history, its business, its technology, or software, and/or its role in the 2020 U.S. election.

110. Third, Mr. Lindell did not exercise due care by gathering and updating information before and after publishing each report. Mr. Lindell purposefully avoided gathering information inconsistent with his preconceived narrative and did not fully and properly update his reporting after being told and learning it was factually inaccurate and misleading.

111. Take just one example. On January 8, 2021, Dominion sent Mr. Lindell a retraction demand letter, explaining how multiple government officials stated there was no evidence of fraud or misconduct during the 2020 U.S. election. (US Dominion, Inc., Retraction Demand Letters to Lindell (Exhibit 38).) The letter attached articles from various news sources confirming that the 2020 U.S. election was not hacked or stolen. Yet, Mr. Lindell began his defamatory campaign against Smartmatic on February 5, 2021, almost a month after receiving this letter.

112. Fourth, Mr. Lindell did not exercise due care because he did not disclose information about his sources so that viewers could make informed decisions regarding credibility. Mr. Lindell failed to disclose his sources' lack of credibility and lack of firsthand knowledge. As discussed above, Mr. Lindell had obvious reasons to doubt the veracity of his guests. But, instead of disclosing those doubts, Mr. Lindell endorsed what they were saying.

113. Fifth, Mr. Lindell did not exercise due care because he did not seek out opposing views. Mr. Lindell intentionally avoided publishing statements by others who would have directly contradicted the false information he presented.

114. Sixth, Mr. Lindell did not exercise due care because he did not report facts with proper context. For example, Mr. Lindell did not call out his guests for stating they had evidence to support their statements about Smartmatic without actually showing or disclosing the evidence.

115. Seventh, Mr. Lindell did not exercise due care because he did not treat Smartmatic with respect. Mr. Lindell attacked an under-the-radar election company that participated in one county during the 2020 U.S. election. Mr. Lindell made Smartmatic and its executives out to be criminals in the minds of millions of viewers in the United States. Mr. Lindell did not care about the damage that he did to Smartmatic.

116. Eighth, Mr. Lindell did not exercise due care because he did not consider the impact of his defamation campaign. Mr. Lindell published statements with the intent of harming Smartmatic and undermining the public's confidence in the integrity of the 2020 U.S. election. Mr. Lindell did not consider the impact of his disinformation campaign on Smartmatic.

117. Ninth, Mr. Lindell did not exercise due care because he did not avoid conflicts of interest. Mr. Lindell allowed his guest to elevate their own self-interest above fairness and



accuracy. Mr. Lindell personally elevated his own self-interest, and that of his company MyPillow, above fairness and accuracy.

118. Tenth, Mr. Lindell did not exercise due care because he was not transparent with viewers. Mr. Lindell failed to disclose to viewers that he was not publishing objective, fact-based statements about Smartmatic. Mr. Lindell misled viewers into believing that he was reporting facts as a result of an evidence-based “investigation,” when they were not.

119. Eleventh, Mr. Lindell did not exercise due care because he did not admit or correct his mistakes. Mr. Lindell failed to admit and correct the factual inaccuracies from the disinformation campaign after being informed of them. As explained above, there were multiple verified sources that confirmed the 2020 U.S. election was not stolen by Smartmatic. After learning of this information, Mr. Lindell did not issue a retraction and did not admit or correct his inaccurate statements about Smartmatic.

**E. Mr. Lindell used his disinformation campaign against Smartmatic for financial gain and acted with ill will and improper motives.**

120. Mr. Lindell not only knowingly participated in publishing false information about Smartmatic during the disinformation campaign, but he also did so with ill will and improper motives for self-promotion. Mr. Lindell acted on behalf of MyPillow and for personal financial gain.

121. Mr. Lindell understood that making statements about Smartmatic could not change the outcome of the 2020 U.S. election. However, on information and belief, changing the outcome of the 2020 U.S. election was not his motivating factor when engaging in the disinformation campaign. Mr. Lindell used the disinformation to continue currying favor with President Trump and his supporters and to pursue his own personal and MyPillow’s financial interests.

122. Mr. Lindell sought the recognition and respect associated with being the President's friend and ally. He sought to capitalize on the popularity he gained as a primary promoter of the disinformation campaign against Smartmatic after Fox News, Newsmax, Rudolph Giuliani, and Sidney Powell had long-since ceased defaming Smartmatic. Mr. Lindell did not start defaming Smartmatic until 2021, after all 50 states certified the election results. Mr. Lindell was one of the last bastions of hope for Donald Trump supporters that did not want to lose faith that President Trump lost the 2020 election.

123. Mr. Lindell has at least three websites where he regularly and continuously posts videos talking about the 2020 U.S. election being stolen from Donald Trump: FrankSpeech.com, MichaelJLindell.com, and LindellTV.com. Each of these websites both (1) prominently advertises for MyPillow and/or Mr. Lindell's book; and (2) defames Smartmatic.

124. First, each website prominently advertises MyPillow products and offers "promo codes" to incentivize purchases from website users. For example, the "Home" Pages of LindellTV.com and FrankSpeech.com have the following graphic prominently displayed:



125. Second, FrankSpeech.com has title bar with a “Podcasts” tab that leads the website user to the following podcasts by clicking the link: *The Eric Metaxas Radio Show* and *Indivisible with John Stubbins*, among others. Mr. Lindell defamed Smartmatic on both of these shows, as explained above. (Exhibits 20, 22).

126. In addition, FrankSpeech.com has a title bar with a “Fix2020First” tab that leads the website user to a page with videos from Mike Lindell’s “Cyber Symposium.” Mr. Lindell and his guests defamed Smartmatic at the Cyber Symposium. (*See e.g.*, Exhibits 32, 34, and 36). The same “Fix2020First” tab on FrankSpeech.com leads the website user to a page with all the videos from Mr. Lindell’s “Absolute” documentary series. Each of these four videos defamed Smartmatic. (Exhibits 1, 3, 5 and 7).

127. Mr. Lindell is also a self-published author and actively promotes his book on his websites and during program segments. Mr. Lindell gained public attention by touting his “from crack addict to CEO” story on his personal websites and on his business website, MyPillow.com. The MyPillow.com website has a section dedicated to selling Mr. Lindell’s book (with a promo code and free shipping). The MyPillow.com website also has a section dedicated to selling Mr. FrankSpeech.com products, including yard signs, coffee mugs, and tee shirts.

128. During the disinformation campaign against Smartmatic, Mr. Lindell leveraged his airtime to promote his story and his book. For example, during a program segment on *Indivisible with John Stubbins* on April 1, 2021, Mr. Lindell defamed Smartmatic, claiming, among other things, that the 2020 U.S. election was stolen through Smartmatic election technology. Mr. Lindell also promoted his book during the same program segment, saying “It’s a great book of hope, it took me seven years to write... ***there’s not a better time [] to launch this book than now.*** And I’ve had – I pre-printed 3 million copies.” (Exhibit 22) (emphasis added).

129. During the disinformation campaign against Smartmatic, Mr. Lindell also leveraged his airtime to promote MyPillow.com. For example, during a program segment on *The Pete Santilli Show* on February 24, 2021, Mr. Lindell defamed Smartmatic, claiming that he had evidence that Smartmatic stole the election, and then advertised MyPillow during the same program segment. The show played a pre-recorded video of Mr. Lindell advertising his “new Giza Dreams bed sheets” and suggesting that listeners “go to mypillow.com or call the number on your screen right now to get your very own MyPillow Giza Dream Sheet.” (Exhibits 16, 17).


130. During the disinformation campaign, Mr. Lindell’s personal profile increased dramatically. Mr. Lindell went from a limited public profile, to being known by the millions of individuals across the country who support President Trump. President Trump’s supporters showed tremendous appreciation and admiration for what he was saying. On information and belief, this fame was a motivating factor for Mr. Lindell. Mr. Lindell understood he could not change the outcome of the election with his disinformation campaign. He could, however, gain a bigger audience for his book and gain more purchasers for his MyPillow products.

131. MyPillow’s advertising efforts tie directly into the disinformation campaign against Smartmatic. MyPillow is prominently displayed on all three of Mr. Lindell’s websites with “promo codes” to encourage purchases. Mr. Lindell made appearances that promoted his websites and MyPillow products while defaming Smartmatic. [Mr. Lindell also continued to display “promo codes” in his defamatory broadcasts about Smartmatic that he published after Smartmatic filed its Complaint in this case.](#)


132. Mr. Lindell benefitted at Smartmatic’s expense when people bought his MyPillow products after watching his defamatory statements about Smartmatic. Mr. Lindell’s advertising efforts in conjunction with his defamatory statements about Smartmatic were apparently


successful. After watching Internet video segments where Mr. Lindell defamed Smartmatic, viewers commented that they would purchase Mr. Lindell's products:


 **MomH**, 42 weeks ago  
I will be buying one of your pillows, Mike! And it will be directly from your company.  
+ - 76 rumbles [REPLY](#)


 **flusem**, 42 weeks ago  
Me too and shipping to the UK.  
+ - 35 rumbles [REPLY](#)

 **LetsGetReadyToRumble1**, 42 weeks ago  
Mike is shipping to the UK, Australia, Canada, Europe....everywhere in the world.  
+ - 26 rumbles [REPLY](#)

 **BereanJane**, 41 weeks ago  
Me, too. Good present, too  
+ - 2 rumbles [REPLY](#)

 **Charlesands**, 42 weeks ago  
Mr. Lindell means business. We'll keep buying pillows.  
+ - 8 rumbles [REPLY](#)

 **mglass50**, 42 weeks ago  
Love this guy....he is a serious patriot. Fearless.....love his courage. And God Bless him. I have his pillows and will certainly be buying a lot more....will be giving them as gifts for every birthday and holiday for sure!  
+ - 7 rumbles [REPLY](#)

 **Zelidarocks**, 42 weeks ago  
we have 4 pillows and two puppy pillows!!! I have a really back neck... it helps me so much!!!  
+ - 2 rumbles [REPLY](#)

 **belanUSD**, 42 weeks ago  
Thank you for being a Patriot Mike...I will be purchasing as well!  
+ - 6 rumbles [REPLY](#)

 **No2Censorship**, 42 weeks ago  
100% I'll be buying pillows only from MyPillow while Mike is in charge. Wonderful man.  
+ - 5 rumbles [REPLY](#)



**F. Mr. Lindell's statements about Smartmatic show personal animosity and ill will towards Smartmatic.**

133. Mr. Lindell's preconceived, false storyline about Smartmatic stealing the 2020 U.S. election used exaggerated language, repetitiveness, outrageous falsehoods, hyperbole, and xenophobia to invoke panic in viewers and listeners. Mr. Lindell exhibited personal animosity, hate, spite, and ill will towards Smartmatic.

134. For example, on February 11, 2021, Mr. Lindell appeared on OANN with Steve Bannon and said, "I wanted to go back to where this all started. And Venezuela, it all started in Venezuela with Smartmatic, not Dominion or the other one, it was with Smartmatic." (*A Screening and Conversation of Absolute Proof* (Exhibit 14).)

135. During the same program segment, Mr. Lindell also said, "[t]his was an attack on our country, these Dominion machines and Smartmatic, these machines that were, that are, that

were this, that were the tools of this attack, and we will never have another fair election if we don't, if we don't stop that, so I will never back down.” (*A Screening and Conversation of Absolute Proof* (Exhibit 14).)

136. Take another example. On February 24, 2021, Mr. Lindell appeared on *The Pete Santilli Show*. He told Mr. Santilli, “Smartmatic started machines in Venezuela, around 2001, 2002. When they [] brought them in there, they invented them and brought them in there and took down that country in two years... They’ve stolen in the United States, the Communist Party is coming in. You have just like Nazi Germany, where you had, they take away communications.” (*The Pete Santilli Show* (Exhibit 16).)

137. Take another example. On April 1, 2021, Mr. Lindell appeared on *Indivisible with John Stubbins*. Mr. Lindell said, “And you know, when you got a track record going all the way back to Venezuela where Smartmatic started in 2004, and you have all this track record and no – and every time it comes up, how bad it is or how corrupt it is or how [] they’re rigged and get bought you know all this all this criminal activity, it just gets suppressed, and we’ve got to get it out now... This is a very Communism Socialism takeover.” (*Indivisible with John Stubbins* (Exhibit 22).)

138. Mr. Lindell did not have any evidence for his outrageous statements about Smartmatic. Mr. Lindell repeatedly made his statements about Smartmatic even though he knew that Smartmatic was only involved in one county in the 2020 U.S. election. Mr. Lindell chose to mention “Venezuela” to invoke xenophobia and fear. Mr. Lindell’s statements used hyperbole about Smartmatic, fueled from personal rage and hatred.

**V. Defendants’ disinformation campaign irreparably harmed Smartmatic and its election technology and software.**



139. Mr. Lindell published his defamatory statements against Smartmatic on multiple platforms over an elongated period of time. Mr. Lindell's defamatory statements were republished by individuals who watched them originally and reposted them to other websites, such as Rumble.com. Mr. Lindell knew and understood this republication would happen. As a result, through Mr. Lindell's publication and republication, Mr. Lindell's statements about Smartmatic were widely and generally disseminated on the Internet.


140. Mr. Lindell's defamatory statements led to Smartmatic's name and brand becoming synonymous with election fraud for members of the general public and government officials, particularly those in the United States. Mr. Lindell's defamatory statements cast Smartmatic as one of the voting technology companies, along with Dominion, that rigged the 2020 U.S. election; and, even worse, Mr. Lindell's statements created the impression that Smartmatic's software was not to be trusted because it was Smartmatic's software that switched votes in voting machines regardless of who supplied the machines.

141. Prior to the 2020 U.S. election, Smartmatic was a known and trusted name among individuals responsible for selecting election technology and systems in voting jurisdictions in the United States and across the world. Smartmatic was not, however, a household name. Smartmatic's long history of helping to conduct secure, accurate, and auditable elections was not known among the general public.

142. Mr. Lindell's defamatory statements irreparably tarnished Smartmatic's name and brand with members of the general public who watched his publications. Below are just a few examples of the reactions people had to Mr. Lindell's publications:



- a. People who heard Mr. Lindell's defamatory statements came to believe that Smartmatic's election technology and software was used to steal elections and that Smartmatic is corrupt.


**FedCURE**, 42 weeks ago


There is no doubt that bad foreign actors interfered with the U.S. 2020 Presidential Election by, inter alia, hacking into DOMINION SMARTMATIC voting machines in swing States and flipped votes from President Trump to Biden; and the President Trump was reelected in a landslide. The Constitution mandates Biden must step down, or be removed. The U.S. Military must immediately exercise its Constitutional authority and install Trump as the 46 POTUS.

+

-

 6 rumbles

REPLY


**gricon**, 42 weeks ago

sue them for BRIBERY to have them use their machines to steal an election.


+

-

 1 rumble

REPLY

- b. People who heard Mr. Lindell's defamatory statements equated Smartmatic with Dominion, another voting machine company that Mr. Lindell indicated stole the 2020 U.S. election.


**FedCURE**, 42 weeks ago


There is no doubt that bad foreign actors interfered with the U.S. 2020 Presidential Election by, inter alia, hacking into DOMINION SMARTMATIC voting machines in swing States and flipped votes from President Trump to Biden; and the President Trump was reelected in a landslide. The Constitution mandates Biden must step down, or be removed. The U.S. Military must immediately exercise its Constitutional authority and install Trump as the 46 POTUS.

+

-

 6 rumbles

REPLY



**deannahelena**, 42 weeks ago

I am will support Mike Lindell financially for him and his council to sue and get the job done that Dominion and Smartmatic are enemies of the State.

+

-

2 rumbles

REPLY

- c. People who heard Mr. Lindell's defamatory statements came to believe that Smartmatic machines were compromised or hacked by China.



**StreamOfConsciousness1**, 42 weeks ago

Unsubbed from Newsmax. They took my comment down here. What about free speech? In short, I told them that Heather Childers and especially Bob Sellers, since he walked off the set like a toddler, that they should apologize to Lindell. He was just trying to tell us what we now know from his docu-movie, that China was behind the fraud and the rigging of the Dominion and Smartmatic voting machines.

+

-

4 rumbles

REPLY

- d. People who heard Mr. Lindell's defamatory statements believed that Smartmatic machines were connected to the Internet during the 2020 U.S. election.

P

**Patvandy**, 42 weeks ago

The fact that there was internet access of the voting machines, the CEO lied at the Senate hearing!! The CEO said these machines cannot be connected to the internet or it would give a warning if connected....People are saying the IP addresses can be faked on the internet that is shown by Mary Fanning, as I said, the fact that these voting machines are even connected to the internet is against Federal voting laws!

+

-

4 rumbles

REPLY

S

**Shellylynnehall**, 34 weeks ago

I love mike, I buy a lot from him for support. He proved the election was rigged and showed china did it and the Democrats know and planned it because the machines were online when they shouldn't have been. I hope behind the scenes people are doing something to stop this madness and put these lying cheating fake Democrats in prison.

+

-

9 rumbles

REPLY

143. Smartmatic's name and brand similarly suffered with government officials, particularly those in the United States, who did not have firsthand experience with Smartmatic

and electronic voting technology. Government officials with firsthand knowledge of Smartmatic's role in the 2020 U.S. election (*e.g.*, officials in Los Angeles County) were happy with how the election was conducted and confident in its outcome. Government officials who watched or read Mr. Lindell's publications about Smartmatic received a very different message.

144. Defamatory statements about Smartmatic and Dominion have led to certain government officials becoming critical of the companies, specifically, and electronic voting, generally. Government officials who had not previously opposed the use of electronic voting began to do so following Mr. Lindell's publications. This includes government officials directly or indirectly involved in the selection of the voting system used in their jurisdiction and the companies who supply machines and services for the selected voting system.

145. The widespread and general distribution of Mr. Lindell's publications about Smartmatic have irreparably tarnished its reputation. Smartmatic's officers and employees have been threatened. Smartmatic's operations have come under attack—physically and electronically. Smartmatic has incurred the following out-of-pocket expenses:

- a. Smartmatic has been required to expend in excess of \$400,000 on public relations and crisis management following Mr. Lindell's publication of his defamatory statements and will spend millions more in the coming years.
- b. Smartmatic has been required to spend in excess of \$100,000 on cybersecurity following Mr. Lindell's publication of his defamatory statements and will spend millions more in the coming years.
- c. Smartmatic has been required to spend in excess of \$700,000 on retention and recruitment for personnel following Mr. Lindell's publication of his defamatory statements and will spend millions more in the coming years.

146. Moreover, Mr. Lindell's publication of his defamatory statements has diminished Smartmatic's business value and prospects. Prior to the 2020 U.S. election, Smartmatic's business value and prospects were linked to its reputation in the industry for providing technology and software that guaranteed secure, accurate, and auditable elections. Individuals responsible for selecting voting systems in the United States and across the world understood they would not be second-guessed if they selected Smartmatic. They understood that selecting electronic voting and Smartmatic was a safe choice based on Smartmatic's track record for providing secure, accurate, and auditable election results.

147. Mr. Lindell's defamation campaign was a direct assault on the reputation that Smartmatic relied upon for its business value and prospects. Mr. Lindell branded Smartmatic as a corrupt company whose election technology and software were used to steal elections. Far from providing secure, accurate, and audible election results, Mr. Lindell branded Smartmatic as a company whose technology and software meant elections were not secure, accurate, or auditable.

148. Mr. Lindell's branding of Smartmatic as a corrupt company substantially contributed to a "no win" situation for Smartmatic with individuals responsible for selecting voting systems. On the one hand, individuals who were not previously familiar with Smartmatic now have a negative impression of electronic voting systems, including those offered by Smartmatic. Those individuals are less likely to select electronic voting systems for their jurisdictions, and, even if they do, they are less likely to select Smartmatic. Mr. Lindell's publications contributed to that negative impression.

149. On the other hand, individuals who were familiar with Smartmatic prior to the publication of Mr. Lindell's defamatory statements have a constituency problem. Individuals familiar with Smartmatic understand its election technology and software ensure secure,

accurate, and auditable election results. However, for some of them, their constituents have been exposed to, and believe, Mr. Lindell's defamatory statements about Smartmatic, Dominion, and election technology. As a result, their selection of electronic voting, generally, and Smartmatic, specifically, would be second-guessed by their constituents. These individuals are less likely to select electronic voting systems for their jurisdictions, and, even if they do, they are less likely to select Smartmatic. Mr. Lindell's publications contributed to this constituency problem.

150. This "no win" situation has diminished Smartmatic's business value and prospects. Prior to the 2020 U.S. election, based on its historical business and pipeline, Smartmatic's business was valued in excess of \$3.0 billion based on a modest multiplier.<sup>9</sup> Now, following Mr. Lindell's publication of his defamatory statements, Smartmatic's business is valued at less than \$1 billion. The general and widespread publication and distribution of Mr. Lindell's defamatory statements about Smartmatic were a substantial cause of a portion of this business valuation decline.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION AGAINST BOTH DEFENDANTS**

##### **(Defamation for False Statements and Implications)**

151. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs ~~1-357~~1-371 of this Complaint as if fully stated herein.

152. From February through June 2021, and through February 2023, Defendants published false statements and implications that (1) Smartmatic was widely used in the 2020

<sup>9</sup> Smartmatic's business pipeline includes sales and opportunities through subsidiaries wholly-owned by Smartmatic International Holding B.V. in the United States, Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore, Netherlands, Mexico, Ecuador, Brazil, Estonia, Taiwan, and the Philippines as well as branches in Columbia, Argentina, Honduras, Pakistan, Italy, Jamaica and El Salvador.

U.S. election in order to attack the election; (2) Smartmatic had a corrupt relationship with Dominion and/or ES&S during the 2020 U.S. election in order to attack the election; (3) Smartmatic stole the 2020 U.S. election; (4) Smartmatic's election technology or software was compromised or hacked by China; (5) Smartmatic's election technology was connected to the Internet during the 2020 U.S. election in order to attack the election; (6) Smartmatic is engaged in a widespread criminal enterprise; and (7) Smartmatic's technology was designed to steal elections. These false statements are pleaded in paragraphs ~~137~~151, ~~143~~157, ~~150~~164, ~~158~~172, ~~165~~179, ~~170~~184, ~~176~~190 which set forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. *See supra* ¶¶ ~~75-128~~75-142.

153. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

154. These statements and implications were false for the reasons stated in paragraphs ~~139-141, 145-148, 152-156, 160-163, 167-168, 172-174, 178-180~~153-155, 159-162, 166-170, 174-177, 181-182, 186-188, and 192-194.

155. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

156. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

157. These statements and implications were defamatory because they harmed Smartmatic's reputation, lowered Smartmatic's reputation in the community, and exposed Smartmatic to public hatred, contempt, ridicule, and degradation.

158. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

159. Both of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs ~~181-345~~195-359.

160. Both of these Defendants also acted deliberately and maliciously to injure Smartmatic out of ill will, and/or causelessly and wantonly made the statements for the purpose of injuring Smartmatic.

161. These false statements and implications by the Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

162. Mr. Lindell was acting in his capacity as the founder, CEO, owner, operator, and representative of MyPillow at all relevant times hereto. Mr. Lindell is MyPillow's agent.

163. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential, and special damages in an amount that will be determined at trial.

164. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice, ill will, and spite towards Smartmatic, and for improper motives.

## **SECOND CAUSE OF ACTION AGAINST BOTH DEFENDANTS**

### **(Minnesota Deceptive Trade Practices, MSA § 325D.44(8))**

165. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs ~~1-357~~1-371 of this Complaint as if fully stated herein.

166. Defendants' false and defamatory statements, as described in detail above, constitute deceptive trade practices in violation of Minnesota Law, M.S.A. § 325D.44(8). Defendants' statements disparage Smartmatic's goods, services, and business by false and misleading representations of fact.

167. The Defendants knew that their factual assertions about Smartmatic were deceptive, as stated in paragraphs ~~194-299~~208-313. Mr. Lindell willfully made these statements while in the course of business as the founder, CEO, owner, operator, and representative of MyPillow. Mr. Lindell made these statements for a commercial purpose.

168. Mr. Lindell used his status as the founder, CEO, owner, operator and representative of MyPillow to defame Smartmatic so that he and MyPillow could derive substantial financial benefit. Defendants derived increased financial benefit through increased sales of MyPillow products because they defamed Smartmatic.

169. Mr. Lindell was acting in his capacity as the CEO, founder, owner, operator, and representative of MyPillow at all relevant times hereto. Mr. Lindell is MyPillow's agent.



170. Defendants' statements have irreparably harmed Smartmatic and will further impair the value of Smartmatic's name, reputation and goodwill without a permanent injunction.

171. Smartmatic is entitled to permanent injunctive relief by way of

- a. removal of all of Mr. Lindell's defamatory statements;
- b. enjoining Mr. Lindell and MyPillow from repeating such statements; and
- c. enjoining Mr. Lindell and MyPillow from engaging in further deceptive trade practices relating to Smartmatic.

172. Smartmatic is also entitled to recover from Lindell its cost of litigation, including reasonable attorneys' fees, pursuant to M.S.A. § 325D.45(2).

#### **PRAYER FOR RELIEF**

173. Wherefore, Smartmatic prays for judgment against Defendants for each of the causes of action raised herein. Smartmatic respectfully requests a judgment in its favor and against Defendants for:

- a. Compensatory damages in an amount to be determined at trial;
- b. Actual, consequential, and special damages in an amount to be determined at trial;
- c. Punitive damages;
- d. Reasonable and necessary attorneys' fees;
- e. Reasonable and necessary costs of the suit;
- f. Prejudgment and post-judgment interest at the highest lawful rates;
- g. Declarative and injunctive relief; and
- h. Such other and further relief as this Court deems just and appropriate.

**JURY DEMAND**

Smartmatic requests a trial by jury on all matters raised herein.

Dated: ~~January 18~~ March 10, 2022 2023

/s/ William E. Manske

Christopher K. Larus

Minnesota Bar No. 0226828

CLarus@robinskaplan.com

William E. Manske

Minnesota Bar No. 0392348

WManske@robinskaplan.com

Emily J. Tremblay

Minnesota Bar No. 0395003

ETremblay@robinskaplan.com

**ROBINS KAPLAN LLP**

800 LaSalle Avenue, Suite 2800

Minneapolis, MN 55402

Telephone: (612) 349-8500

Facsimile: (612) 339-4181

J. Erik Connolly (admitted *pro hac vice*  
*forthcoming*)

EConnolly@beneschlaw.com

Illinois ARDC No. 6269558

Nicole E. Wrigley (admitted *pro hac vice*  
*forthcoming*)

Illinois ARDC No. 6278749

NWrigley@beneschlaw.com

Michael E. Bloom (admitted *pro hac vice*)

MBloom@beneschlaw.com

Illinois ARDC No. 6302422

Maura T. Levine-Patton (admitted *pro hac vice*  
*forthcoming*)

MLevine-patton@beneschlaw.com

Illinois ARDC No. 6330026

Julie M. Loftus (admitted *pro hac vice*)

JLoftus@beneschlaw.com

Illinois ARDC No. 6332174

**BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP**

71 South Wacker Drive, Suite 1600

Chicago, IL 60606  
Telephone: (312) 212-4949

*Attorneys for the Plaintiffs Smartmatic USA  
Corp., Smartmatic International Holding B.V.,  
and SGO Corporation Limited*

<b>Summary report:</b> <b>Litera Compare for Word 11.2.0.54 Document comparison done on</b> <b>3/10/2023 11:32:40 AM</b>	
<b>Style name:</b> Compare All	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://beneschlaw-dms.imatech.com/BENESCH/15054724/10	
<b>Modified DMS:</b> iw://beneschlaw-dms.imatech.com/BENESCH/20811342/7	
<b>Changes:</b>	
Add	226
Delete	168
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	2
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>396</b>